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Relevant Docket Entries

Civil Docket

United States District Court, Central District

United States of America, Plaintiff,

vs.

Alfred Coleman and Edward J. McClellan

63-956-WB

In Ejectment, for Damages & for Other Relief

8-8-63	Fld complt in ejectment, for damages & for other relief re land in San Bernardino Base & Meridian. Issd sums—Md JS-5.
6-26-64	Fld Answer of deft Alfred Coleman & counterclaim.
7-16-64	Fld plf's not of mot for summy jdgmt, retble 8/3/64 9:45 am on issue of ejectment only for dismissal of counterclaim & memo in suppt Lodged proposed findgs of fact, concls of law & Lodged proposed jdgmt Lodged proposed Exhibit Nos. 10 and 23 to 42 incl.
8-18-64	Fld ans & oppos to plfs mot for summy jdgmt. Fld defts stsmt of genuine issues. Fld pts & auths in oppos to mot for summy jdgmt. Fld affid of Alfred Coleman in oppos to plfs mot for summy jdgmt.
12-7-64	Fld ord denyg mot for summ jdgmt & dism of counterclaim. Mld cpys to cnsl.
1-13-65	Fld plfs not of mot & motn for resubmission of plts motn for summy judgmt, retble 1/25/65, 9:45 AM and for dismissal of counterclaim. Fld affid of Ernest F. Hom.
2-25-65	Fld judgmt on issue of ejectment, fv pltf & agnst defts for perm injunc enjoining defts from use of cert land, etc., & fur ord defts hv 60 days from final judgmt to remove structures from sd property etc. (Ent 2/26/65 & notfd attys).

5-11-65	Court trial on issue of damgs only. Sw wit Ct finds in fv pltf & agnst defts & Awards damgs in amt of $1,877.50. Counsl pltf dir to subm formal judgmt thereon & Ct signs sd judgmt in open Ct.
5-11-65	Fld final judgmt fv pltf & agnst defts, & ord defts enjoined from entering upon cert lands, using property, etc., & ord defts have 60 days to remove structures on sd lands; & fur ord pltf recover damgs in sum of $1,877.50 & costs, & pltf recover from deft Edward J. McClellan $100.00 damages. (Ent 5/12/65 & notfd attys) JS-6.
6-3-65	Fld defts not of appeal with affvid of svc thereon & fld defts not of mot & mot for lv to appeal in forma pauperis retble 6/14/65 at 2 PM.
8-23-67	Fld jdgmt & ord USCA remanding to USDC with instrtn to ent jdgmt dyng pltf's pryr for ejectmnt & cntclm & revrsng finl decisn of Secty of Intrer & remnding case to the Interior for fur procdngs, etc. (Ent 8/23/67).

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 20227

ALFRED COLEMAN AND EDWARD J. MCCLELLAN

vs.

UNITED STATES OF AMERICA

1966	
June 21	Filed opinion. Remanded to DC etc.
June 21	Filed and entered Judg.
Aug. 19	FILED 20 APPELLEES PETITION FOR REHEARING.
1967	
Jan. 3	Filed order (C J Thompson) inviting Sec. of Interior to move to be joined as a party in this action (within 30 days) etc.
Jan. 27	Filed orig & three of motion for joinder of Sec. of Interior as a party.
Feb. 9	Filed order (C & J, CJJ & Thompson, DJ) granting motion of Udall, Sec of Interior to be joined as a party; *rehearing granted* appellees have 30 days to file supp brief, the applt 30 thereafter.
June 20	Filed order (C J Thompson) on rehearing adhering to and confirming the opinion and decision filed June 21, 1966.

Civil No. 63-956-WB

Complaint in Ejectment, for Damages, and for Other Relief—Filed August 8, 1963

Comes Now United States of America, plaintiff, herein, by Francis C. Whelan, United States Attorney, and Dennis F. Donovan, Jr., Assistant United States Attorney, upon the request of the Secretary of the Agriculture and upon the direction of the Attorney General of the United States and complains of the defendants, and each of them, as follows:

1. This is a civil action brought by the United States of America as plaintiff and the jurisdiction of this court is invoked under Section 1345, Title 28, United States Code.

2. Defendants, since July 23, 1955, have occupied and are continuing to occupy public lands of the United States in San Bernardino County, State of California, in Sections 1, 2, and 12, Township 2 North, Range 1 East, and Sections 6 and 7, Township 2 North, Range 2 East, San Bernardino Base and Meridian, the lands so occupied being covered by invalid mining claims known as the Baldwin Lake Quarry Claims Nos. 1, and 4 through 20. These mining claims were declared null and void by decision of the Secretary of the Interior, acting through the Solicitor, dated March 27, 1962. Such decision of the Secretary, a copy of which is attached and marked Exhibit A, is final, binding and conclusive upon these matters between the parties thereto. On these lands defendants have emplaced various fixtures. From these lands defendants have removed sand, gravel, stone and other materials which they have sold.

3. The reasonable rental value of the lands so occupied by defendants is $50 per month. The exact value of the materials removed by defendants is not known by plaintiff, but is not less than $4,000.00.

Wherefore, plaintiff demands as to said defendants, and each of them, as follows:

1. Damages of $4,800.00 for rental value up to and including July 22, 1963, and continuing damages of $50 per month to date of judgment;

2. That defendants be required to render an accounting for all materials removed by them from said lands since July 23, 1955;

3. Damages of $4,000.00 for removal of said materials plus such additional damages as may be warranted by said accounting or by such other evidence as may be adduced in the trial of this case;

4. That defendants be required to vacate said lands and promptly to remove the fixtures they have emplaced thereon or to pay the reasonable cost of removal thereof.

5. Such other relief, including costs, as the court may deem just.

DATED: August 8, 1963.

Francis C. Whelan, United States Attorney. Dennis F. Donovan, Jr., Assistant U. S. Attorney. By Dennis F. Donovan, Jr., Attorneys for Plaintiff

DFD: jsl 8/8/63

A-28557

EXHIBIT "A"

UNITED STATES
v.
ALFRED COLEMAN

DECIDED—March 27, 1962.

Mining Claims: Common Varieties of Minerals—Mining Claims: Discovery—Mining Claims: Determination of Validity.

To satisfy the requirement for a discovery on a building stone claim located before July 23, 1955, it must be shown that the exposed materials, a common variety of stone, appearing within the limits of a claim could have been extracted, removed, and marketed at a profit prior to that date, and where such a showing is not made the mining claim is properly declared null and void.

UNITED STATES DEPARTMENT OF THE INTERIOR

Office of the Secretary

Washington 25, D. C.

A-28557

UNITED STATES
v.
ALFRED COLEMAN

Contest No. 6833 (Los Angeles); mineral patent application, Los Angeles 0137951.

Placer mining claims held valid in part and null and void in part.

Affirmed in part; reversed in part.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT.

Alfred Coleman has appealed to the Secretary of the Interior from a decision of the Acting Director of the Bureau of Land Management dated June 22, 1960, which modified a hearing examiner's conclusion holding null and void 13 of the 18 placer mining claims and holding the remaining 5 claims to be valid. The Acting Director held an additional claim and 20 acres of another, null and void, thus sustaining the validity of only 3 claims and part of a fourth claim.

The claims, which comprise 720 acres situated in the dry bed of Baldwin Lake and on an adjoining steep mountain, are in the San Bernardino National Forest in California. They were located for quartzite which outcrops on all the claims and is thought to extend 1000 feet below the surface. The claims, designated as the Baldwin Lake Quarry Claims Nos. 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, were located and relocated in the period 1949-1955. Application for patent was filed in January 1956, and on February 25, 1958, a contest was commenced on charges that the land in the claims is nonmineral; that minerals had not been found in sufficient quantities to constitute a valid discovery; and that $500 had not been expended in improvements on claims 7, 9, 11, 12, 13, 14, 15, 16, 17, 18 and 19. A hearing was held on September 16, 1958.

At the hearing, Coleman testified that he had devoted all of his time and effort to development of the claims during the 10 years since the location. He said, however, he felt that proper development would require removal of rock from the top of the mountain downward and, therefore, he had devoted his efforts to the construction of a home which would permit him to live on one of the claims, to the development of sewage disposal facilities and a water supply for domestic use and for quarrying and processing operations at a later time, and to the building of roads to provide access to the higher claims. He used weathered rock fragments in the construction of his house and in fencing the area of the spring and for fill in the dwelling area. He sold an estimated 1000 tons over the 10-year period, but did not attempt to commence active quarrying operations although he installed some rock processing equipment. He said that he needed title to all of the claims to be able to provide a complete range of colors of ornamental rock for construction use and as security for loans that he might need in the future, as well as for proper development of the claims. He said he did not want to attempt extensive sales until he was fully equipped to offer a wide selection of colors and certain delivery. Shortly before the hearing, he entered into a lease permitting his lessee to process and dispose of sand, gravel and other severed rock products not including building stone. The lessee testified that he installed his own equipment and that he sold in excess of $4000 worth of sand, gravel, lateral rock for septic tank leaching fields and fill material in the first 2½ months of operations under the lease.

Coleman did not controvert the charge that less than $500 worth of work had been done on many of the claims, but he contended that the requirements of the mining laws had been met by the placing on some of the claims of extensive improvements which are of value to all of them. On cross examination, he gave what he termed as wild estimates of the value of the improvements placed on and of the materials removed from all of the claims. His total valuation for improvements on the 18 claims was $17,200; for materials removed $15,990. He admitted that the improvements on 11 of the claims did not exceed $150 in value. He claimed $1500 on 3 claims, $4000 for roadwork on one claim, and $6500 for his combined home, garage and shop one one of the claims. On the remaining 2 claims, he gave values of $200 and $750. He also admitted no removals.of rock or rock products from 6 of the claims; removals valued at $60 from one claim; from $100 to $120 from 3 claims; $240, $250 and $350 from 3 others; $1350, $1500 (from each of 2 claims) and $2000 from 4 more; and $8400 from one over the 10-year period.

The government's witnesses testified that there are large quantities of quartzite of various colors on the claims and in the area of 28,000 acres of which the claims are a part; that such rock can be used for construction purposes; that there is not a great demand for it because it is very heavy and, therefore, expensive to handle; that it splits unpredictably so that there is a great deal of waste which can be utilized for gravel only with considerable expense for crushing because of its hardness; and that it cannot be split into thin layers for facing and surfacing, which greatly increases the weight of the quantity of material required for covering a given area over the requirements for other accessible rock. Coleman's estimate of sales amounting to $12,000 over a 10-year period was not questioned, nor his report of sales amounting to $1025 in 1957, but a government's witness stated that he felt that the roads on the claims evidenced lesser values than Coleman claimed. He concluded that the possible demand for rock from the claims and the evident increasing difficulty of producing disposable rock as the more usable fractions are removed could not justify a prudent man in spending time and money with a reasonable chance of success in developing a valuable enterprise.

The hearing examiner summarized all of the evidence presented at the hearing, noting the very widespread occurrence of the stone claimed as a discovery, the limited potential market and the paucity of the claimant's sales. He concluded, however, that the Colemans[1] had "established a limited market for the types of building stone found upon their claims" and had in good faith developed claims numbered 1, 4, 5, 8 and 10. He, therefore, declared these 5 claims validated by discovery and the 13 other claims null and void. On appeal, the Acting Director noted that Coleman's sales have not afforded him any recompense for his continuous labor over a 10-year period, but concluded that there is a market for a limited amount of building stone from 3 claims and a portion of one other claim that are most fully developed, and from which the bulk of his sales have been made, so that continued sales at the rate shown for the first 10 years of operations will produce a profit over and above the value of Coleman's labor in removing the stone from these claims. Accordingly, he approved the examiner's judgment as to a valid discovery on claims numbered 1, 5, 8 and the portion of No. 10 described as the N½SE¼NW¼ of section 7, T. 2N., R. 2 E., S. B. M. He added claim No. 4 and the west one-half of claim No. 10 to the list of null and void claims.

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[1] The contest was brought against Mr. and Mrs. Coleman but Mrs. Coleman died while the appeal was pending before the Director.

In its successive appeals from the validation of some of the claims, the Forest Service has contended that there has been no discovery of a valuable mineral deposit on any of them because of Coleman's inability to sell anything removed from the claims at a price which includes the reasonable value of his labor. It points out that because the claims are located in a national forest, the evidence of their validity should be clear and unequivocal, citing the Department's decision in *United States* v. *Duvall,* 65 I. D. 458, 661 (1958).

In his appeals, Coleman contends that the charges against his claims of nonmineral land and no discovery have no validity in view of the 720 acres of solid rock fully exposed to view and that his evidence of improvements shows clearly that sufficient expenditures have been made on some of the claims for the benefit of all of the claims. He urges that the charges be dropped and that the land office conclude the patent proceedings without further delay.

It is well-established that a mining claimant is entitled to a patent to his mining claim if he has made a discovery of a valuable mineral deposit within the limits of the claim (30 U. S. C., 1958 ed., secs. 23, 35). The act of August 4, 1892 (30 U. S. C., 1958 ed., sec. 161), expressly authorizes the location of mining claims for building stone. Therefore, it was essential in this contest that Coleman show that he has made a discovery of building stone within the limits of his claims. This Department held early in the history of proceedings under the mining laws that a validating discovery is shown by reasonable evidence of a finding of minerals of such character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine (*Castle* v. *Womble,* 19 L. D. 455 (1894)), and this standard has been sanctioned by the courts. *Chrisman* v. *Miller,* 197 U. S. 313 (1905); *Cameron* v. *United States,* 252 U. S. 450 (1920); *Foster* v. *Seaton,* 271 F. 2d 836 (D. C. Cir. 1959). When the mineral claimed as a discovery is one of wide occurrence the Department has held that the characterization of a deposit of such material as a valuable mineral is dependent upon a showing that it can be extracted, removed and marketed at a profit. *Layman et al.* v. *Ellis,* 52 I. D. 714 (1929); *United States* v. *Barngrover et al.,* 57 I. D. 533 (1942); see also *Ickes* v. *Underwood,* 141 F. 2d 546, 549 (D. C. Cir. 1944). To justify his possession of public land, the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand and other factors, a deposit of materials such as building stone or sand and gravel is of such value that it can be processed, removed and disposed of at a profit. Solicitor's opinion, 54 I. D. 294, 296 (1933); *United States* v. *Strauss et al.,* 59 I. D. 129 (1945); *United States* v. *Foster et al.,* 65 I. D. 1 (1958), aff'd *Foster et al.* v. *Seaton, supra.* See also *United States* v. *Estate of Hanny,* 63 I. D. 369, 373 (1956); *United States* v. *Black,* 64 I. D. 93, 96 (1957); *United States* v. *Fife et al.,* A-28386 (September 19, 1960).

Furthermore, since the Congress withdrew common varieties of building stone, sand and gravel from location under the mining laws on July 23, 1955 (30 U. S. C., 1958 ed., sec. 611), it was incumbent upon Coleman to show that all the requirements for discovery of a valuable mineral deposit, including a showing that these materials could have been extracted, removed, and marketed at a profit, had been met by that date. *United States* v. *Fife, et al., (supra).*

In view of the immense quantities of identical stone found in the area outside the claims, the stone must be considered a "common variety" within the meaning of the act.

It is very clear that Coleman did not make the showing required as to the undeveloped claims which the Acting Director declared to be null and void. Whether expenditures for improvements on other claims may or may not be credited to these claims is immaterial because it is abundantly clear that there was no marketing of any products from these claims in 1955 or even in 1958 when the hearing was held. Coleman presented evidence of sales from the four claims upon which the bulk of his improvements were placed. However, he admitted that he did not make any profit on his rock sales. He testified to estimated removals of rock, not all of which was sold, valued at $15,990. He also testified to labor on the claims (more than 3000 days from 12 to 18 hours in length at $3.50 per hour) of the value of at least $157,500. (Tr. 116, 117.)[2] It is not clear that his estimate of the value of his labor included the costs of obtaining and operating the equipment by which it was accomplished; in the absence of an explanation it is reasonable to assume that $3.50 per hour was not intended to cover the use of trucks, bulldozer and blasting equipment. But even if it were possible to amortize the costs of acquiring his heavy equipment, the great disparity between his own estimate of the value of the mineral actually marketed from the claims and the costs of doing so indicates the absence of any element of profit.

The only issue in dispute at the hearing on September 16, 1958, was the existence of a market for profitable sales before July 23, 1955. The testimony of the government's mineral examiner, describing an examination of the claims in Coleman's company and of his sales records, and that of a producer and distributor of stone products, describing the market for rock and stone in southern California, are sufficient to constitute a prima facie showing of invalidity. The burden was upon Coleman to show by a preponderance of the evidence that each of his claims was validated by a discovery of a valuable mineral deposit within its boundaries. *Foster* v. *Seaton, supra.* He was required to show that by reason of all pertinent factors, including the existence of a present demand before July 23, 1955, the deposit upon which his claim of discovery was based could be mined, removed and disposed of at a profit. See *United States* v. *Philip Jungert,* A-28199 (April 14, 1960); *United States* v. *Jacobo*

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[2] This reference is to the pages of the transcript of the testimony offered at the hearing.

Armenta et al., A-28248 (June 22, 1960). I am unable to find evidence which supports such conclusion as to any of the claims.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 210.2.2A(4)-(a), Departmental Manual; 24 F. R. 1348), the decision of the Acting Director is affirmed in so far as that decision held 14½ of Coleman's Baldwin Lake quarry mining claims null and void and reversed in so far as it held 3½ of his claims validated by discovery. All of the Baldwin Lake quarry placer mining claims are hereby held to be null and void.

Edward W. Fisher, Deputy Solicitor.

ANSWER OF DEFENDANTS AND COUNTER CLAIM OF ALFRED COLEMAN

Come now the above named defendants, and for their answer to the complaint on file herein, admit, deny and allege as follows:

I

Deny each and every, all and singular, the allegations of the complaint herein, except as herein specifically admitted.

II

This answer is based on:

(a) The Constitution of the United States, particularly Articles I, II, III and IV, and the 5th and 14th Amendments to the Constitution of the United States.

(b) The Mining Laws of the United States, 30 USCA Sections 21, et seq.; R.S. 2318, et seq.;

(c) Law authorizing actions in local District Courts against Government officials; Public Law 87-748; 76 Stat. 744, passed October 15, 1962;

(d) The Administrative Procedure Act, 5 and 6 USCA, Chapter 19, Sections 1001, et seq.; 60 Stat. 237.

Defendants deny the allegations of Paragraph 2 of the complaint herein that the "decision" of the Secretary of the Interior, acting through the Solicitor, dated March 27, 1962, is "—final, binding and conclusive—" on the matters between the parties hereto, because the Administrative Procedure Act (60 Stat. 237, 5 and 6 USCA, Chapter 19, Sec. 1001, et seq., (and particularly Section 1009) provides that:

> "(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statutes, shall be entitled to judicial review thereof."

The defendants allege that they have suffered legal wrong because of the actions of the Department of the Interior and its various component branches, and by the action of the Department of Agriculture and its various components in connection with their mining claims; also because Public Law 84-167, passed July 23, 1955, which specifically provides that it shall not apply to mining claims located prior to its passage, has been used in an attempt to invalidate the defendants' mining claims which were located in 1949, 1950, 1951 and 1952, long before July 23, 1955. Such retroactive use of Public Law 84-167 being prohibited, the decisions based thereon are void as taking property without due process of law in violation of various constitutional provisions herein referred to.

III

Defendant Alfred Coleman alleges that he is the owner and holder of 18 placer mining claims located during the years 1949, 1950, 1951 and 1952 on the public domain of the United States in Sections 1, 2 and 12, T. 2 N., R. 1 E., and Sections 6 and 7, T. 2 N., R. 2 E., in San Bernardino County, California, said placer mining claims being fully described in Exhibit A, attached hereto and made a part hereof as though herein fully set out.

The eighteen placer mining claims were located by defendant Alfred Coleman and his then wife, Edna W. Coleman, who died November 16, 1959. Thereafter, but prior to the filing of this action, her estate was probated and her interest in said placer mining claims was distributed to defendant Alfred Coleman.

Said mining claims were located under the Mining Laws of the United States (30 USCA), particularly under Section 161 thereof, the first sentence of which reads as follows:

> "Any person authorized to enter lands under the Mining Laws of the United States may enter lands

which are chiefly valuable for building stone under the provisions of the law in relation to placer mining claims.—". (See 30 USCA p. 399, Stat. 348.)

The mining law, particularly Section 161, contains no limitations as to the type of stone covered thereby; or as to the quality of the stone; nor does it require a commercial deposit, marketability or profit.

The property covered by the 18 placer mining claims is very rough, being composed entirely of stone. It is not suitable for farming or grazing, but is valuable only for mining.

The United States Supreme Court has decided that an unpatented mining claim is real property, and for all intents and purposes is equivalent to patented fee property, except that the paramount title is in the United States, which holds the land in trust for the mining claimant, and is required to issue mineral patents therefor when the owner of the mining claims has complied with the terms of the mining law.

IV

Defendants allege that said eighteen placer mining claims are now, and always have been, valid and subsisting mining claims, because they were located according to the mining laws of the United States and the mining laws of the State of California.

(a) At the time each of the herein described placer mining claims was located, the locator had discovered thereon stone as authorized by said Section 161 of the Mining Laws. Defendants allege that discovery was made because the stone on the land had been there for thousands of years before said discovery and location.

(b) The defendant Coleman did, or caused to be done, not less than $500 worth of work on, or for the benefit of, each of the eighteen placer mining claims herein involved. Under Section 29 of the Mining Laws (R.S. 2325) (30 USCA p. 227) he therefore was entitled to mineral patent for all of said eighteen placer mining claims.

As shown above, seven (7) of these mining claims were located in 1949; one (1) in 1950; nine (9) in 1951 and one (1) in August 1952. Since the complaint in the government's contest was served upon defendants under date of March 7, 1958, more than five years had elapsed between the location of the claims and the service of the complaint in the contest. Therefore, under the Mining Laws, 30 USCA p. 333, Section 38; (R.S. 2332), the right of Alfred Coleman to obtain patent thereto was further established.

V

On July 23, 1955, Congress passed what is known as Public Law 84-167. By its terms "common varieties of sand, stone, gravel, pumice—" were excluded from location. A law does not have retroactive effect unless it so specifically provides. This common variety law, P.L. 84-167, specifically provides that it shall not apply to mineral and mining rights on mining claims located prior to its passage.

(a) The question of whether this stone is a common variety is not involved herein, because the claims were located many years prior to July 23, 1955.

However, the stone is not of a common variety, even within the terms of Public Law 84-167, because it is an unusual decorative stone, having many distinguishing characteristics such as cleavage, texture, color, hardness and strength; non-absorption, high silicon content, heat resistence, minimum expansion and contraction. It has special properties making it valuable for use in manufacturing, industry and processing operations.

(b) The stone can be quarried to considerable depth, so that there is a large supply for long-time operations. That the stone has commercial value for building and ornamentation is proved by the sales of said stone over a period of years since the claims were located.

(c) The geographical location of this deposit of a valuable natural resource is favorable for past, present and future production to point of utilization. This mineral deposit is readily accessible for transportation via both California State Highway 18, passing through the property, and a short 9-mile downgrade haul to a loading spur of the Santa Fe Railway in Lucerne Valley assures delivery of products to an ever-expanding market for all types of products from said claims which such markets now require, or may in the future require.

(d) At the time the bill to exclude common varieties from location was pending before the House Interior and Insular Affairs Committee, it was specifically stated by the proponents of the Bill that it would not be used to disturb or harass legitimate miners. This was later confirmed through hearings before said committee on January 31 and February 1, 1957.

Notwithstanding the specific provisions of the law, as more fully alleged herein, said Public Law 84-167 has been, and is being, used to declare the defendants' mining claims void, which is a legal wrong and adversely affects and aggrieves the defendant Coleman.

VI

These defendants allege that, as authorized by the United States Mining Laws, on or about the 23rd day of January, 1956, defendant Coleman and his then wife, Edna W. Coleman, filed an application for mineral patent in the United States Land Office of the Department of the Interior at Los Angeles, California, covering the eighteen placer mining claims herein described, the number assigned thereto being Patent Application M.A. 013795LA.

Defendants admit that under date of March 7, 1958, the Colemans were served with a complaint in the government's contest against said application for mining claims, being Contest No. 6833.

Defendants allege there was no ground or justification for the filing by the United States of said contest because:

1. Each of the mining claims was properly located in compliance with the mining laws of the United States and of the State of California.

2. The Colemans had made discovery on each of said claims at the time they made their location thereon, as above alleged; had expended at least $500 on, or for the benefit of, each of said placer mining claims, and they were therefore entitled to patent under Sections 29 and 38 of the United States Mining Laws. 30 USCA, pages 227 and 333.

After a hearing before the Hearing Examiner, the latter issued his decision under date of December 18, 1958, in which he found that five of the mining claims, Nos. 1, 4, 5, 8 and 10, were valid and subsisting placer mining claims. The Hearing Examiner found that the other thirteen claims were invalid for reasons which are contrary to the mining law and court decisions in connection therewith, and by the retroactive use of Public Law 84-167.

3. Defendants deny that there was ever a legal decision by the Department of the Interior, either by the Hearing Examiner, the Bureau of Land Management or the Secretary of the Interior, invalidating any of the mining claims herein described for the following reasons:

(a) The decision of the Hearing Examiner declaring thirteen of the placer mining claims invalid was, and is, contrary to the evidence, and contrary to the mining laws and court decisions construing the mining laws, and because based on retroactive use of Public Law 84-167 of June 23, 1955, and should therefore have been reversed by the Bureau of Land Management or the Secretary of the Interior.

(b) The defendant Coleman and his then wife and the Forest Service appealed the decision of the Hearing Examiner to the Bureau of Land Management, which found that 3½ claims were valid, and 14½ were invalid.

The so-called appeal to the Bureau of Land Management was not handled as an appeal, because after the Colemans had filed their notice of appeal, and brief in support thereof, no brief was filed by the Department of the Interior on behalf of the United States in support of its position, nor was there any hearing, but an ex-parte "decision" was issued by the Acting Director of the Bureau of Land Management bearing date June 22, 1960, which appeared to be a brief prepared by the Solicitor's office on behalf of the Department of the Interior.

(c) The defendant Coleman and the Forest Service appealed to the Secretary of the Interior. The decision thereon, dated March 27, 1962, by a Deputy Solicitor, declared all eighteen claims void.

After the defendant Coleman had filed his notice of appeal to the Secretary of the Interior, and filed his brief in support thereof, no brief was filed by the Department of the Interior on behalf of the United States in support of its position, and there was no hearing, but again an ex parte "decision" was issued, signed by Edward W. Fisher, Deputy Solicitor, which was merely the Solicitor's brief on behalf of the Department.

The Solicitor is the General Counsel of the Department of the Interior. To have the Solicitor or a Deputy Solicitor act as the Appellate Judge in an appeal to the Secretary of the Interior is a denial of due process of law, a violation of the 5th and 14th Amendments to the Constitution of the United States, and is contrary to the American system of justice.

(d) The defendants have been informed and believe, and therefore allege, that there are secret instructions or regulations in the Department of the Interior concerning the handling of actions involving mining claims, and particularly in connection with application for mineral patents.

That decisions based upon such secret instructions or regulations adversely affected these defendants, are unconstitutional, contrary to law, and denial of due process of law.

VII

The Supreme Court of the United States and other courts have decided that the mining laws should be liberally construed in favor of the mining claimant. However, the decisions in connection with Contest No. 6833 against the eighteen (18) placer mining claims herein described, instead of using a liberal construction, are hypertechnical, narrow, strained and contrary to the evidence.

The decisions by the Hearing Examiner, by the Bureau of Land Management and by the Solicitor's office on the appeal to the Secretary, as to all eighteen placer mining claims, are, and each of them is, arbitrary, capricious and an abuse of any discretion any of them might have had.

As to the five claims which the Hearing Examiner found to be valid, there was no additional evidence taken, either by the Bureau of Land Management or the Solicitor's office, and no hearing held before the Hearing Examiner's decision was reversed, so that the decisions as to those five placer mining claims by the Bureau of Land Management and the Solicitor's office are each clearly contrary to the evidence, arbitrary, capricious and an abuse of any discretion.

The decisions of the Hearing Examiner as to thirteen placer mining claims, the Bureau of Land Management as to fourteen and one-half (14½) placer mining claims, and the Solicitor's office as to all eighteen mining claims, are, and each is, unconstitutional, contrary to law, and contrary to the evidence.

VIII

Defendants admit that while the defendant Edward J. McClellan at one time did have an agreement with the defendant Coleman to work said eighteen (18) placer mining claims, that contract was terminated as of August 11, 1962, and the said Edward J. McClellan now has no interest in such placer mining claims.

IX

Defendants deny the allegations of Paragraph 3 of the complaint, and deny that they, or either of them, owe anything for any material mined and removed from the property covered by any of the mining claims herein described. Defendant Coleman alleges that the mining claims were, and are, valid and subsisting placer mining claims, and that they belong to him as is more fully described herein, and the materials removed therefrom belong to him.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, AND BY WAY OF A COUNTERCLAIM IN FAVOR OF DEFENDANT ALFRED COLEMAN, DEFENDANTS ALLEGE:

I

That defendant Alfred Coleman is the owner and holder of the eighteen (18) placer mining claims located during the years 1949, 1950, 1951 and 1952 on the public domain of the United States in Sections 1, 2 and 12, T. 2 N., R. 1 E., and Sections 6 and 7, T. 2 N., R. 2 E., in San Bernardino County, California, said placer mining claims being fully described in Exhibit A, attached hereto and made a part hereof as though herein fully set out.

That the claims were located by defendant Alfred Coleman and his then wife, Edna W. Coleman, who died November 16, 1959. Thereafter, but prior to the filing of this action, her estate was probated and her interest in said placer mining claims was distributed to defendant Alfred Coleman.

Said mining claims were located under the Mining Laws of the United States (30 USCA), particularly under Section 161 thereof, the first sentence of which reads as follows:

> "Any person authorized to enter lands under the Mining Laws of the United States may enter lands which are chiefly valuable for building stone under the provisions of the law in relation to placer mining claims.——". (See 30 USCA p. 399, Stat. 348).

The mining law, particularly Section 161, contains no limitations as to the type of stone covered thereby; or as to the quality of the stone; nor does it require a commercial deposit, marketability or profit.

The property covered by the eighteen placer mining claims is very rough, being composed entirely of stone. It is not suitable for farming or grazing, but is valuable only for mining.

The United States Supreme Court has decided that an unpatented mining claim is real property, and for all intents and purposes is equivalent to patented fee property, except that the paramount title is in the United States, which holds the land in trust for the mining claimant, and is required to issue mineral patents therefor when the owner of the mining claims has complied with the terms of the mining law.

II

The defendants repeat and reallege each and all of the allegations of the following paragraphs of the foregoing Answer: Paragraphs II, IV, V, VI and VII as though fully set forth herein.

III

That by reason of the foregoing facts, the defendant herein Alfred Coleman is entitled to an order and decree of this Court directing the United States of America to issue forthwith a mineral patent in and to the eighteen (18) placer mining claims hereinabove described.

WHEREFORE, defendants pray:

(a) That plaintiff take nothing by its complaint, and that the same be dismissed;

(b) That defendants have and recover their costs of suit herein incurred; and

(c) For such other and further relief as to the Court may seem meet and just.

FURTHER, the defendant Alfred Coleman prays:

1. That the Court direct the United States of America to instruct the Secretary of the Interior to issue forthwith a United States Mineral Patent to the defendant Alfred Coleman covering the eighteen (18) placer mining claims here involved; and

2. For such other and further relief as to the Court may seem meet and just.

George W. Nilsson and Monta W. Shirley. By George W. Nilsson, Attorneys for Defendants and Counterclaimant.

W. H. Weddell, Esq., 374 West Court Street, San Bernardino, California 92402, Of Counsel.

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
County of Los Angeles, ss:

ALFRED COLEMAN, being first duly sworn, deposes and says:

That he is one of the defendants in the above entitled action, and that he is the counterclaimant in the counterclaim therein; that he has read the foregoing Answer and Counterclaim, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters that he believes them to be true.

s/Alfred Coleman

Subscribed and sworn to before me this 26th day of June, 1964.

[OFFICIAL SEAL]

MONTA W. SHIRLEY, Notary Public, California. Principal Office in Los Angeles County.

My Commission Expires November 8, 1966.

Exhibit "A"

Legal Descriptions

Baldwin Lake Quarry Claims—Nos. 1 and 4 through No. 20, inclusive, located in Sections 1, 2 and 12, Township 2 North, Range 1 East, and Sections 6 and 7, Township 2 North, Range 2 East, being eighteen (18) 40-acre colocated claims—all surveyed land—in San Bernardino County, California, (San Bernardino County Records), as follows:

Recorded Name of Claim	1st Date Located	1st Date Recorded	Dates of Amended Locations	Dates of Recording Amendments	Book	Page
Baldwin Lake Quarry No. 1	2/17/49	2/19/49	—	—	304	481
			6/ 4/49	6/14/49	306	204
			3/ 3/50	3/16/50	311	534
Baldwin Lake Quarry No. 4	6/ 4/49	6/18/49	—	—	306	319
			7/ 2/49	7/12/49	308	127
Baldwin Lake Quarry No. 5	7/ 2/49	7/12/49	—	—	308	128
Baldwin Lake Quarry No. 6	7/ 2/49	7/12/49	—	—	308	129
Baldwin Lake Quarry No. 7	7/ 2/49	7/12/49	—	—	308	130
			3/ 3/50	3/16/50	311	535
Baldwin Lake Quarry No. 8	7/ 2/49	7/12/49	—	—	308	131
Baldwin Lake Quarry No. 9	7/ 2/49	7/12/49	—	—	308	132
Baldwin Lake Quarry No. 10	3/ 3/50	3/16/50	—	—	311	536
			11/12/54	11/15/54	348	107
Baldwin Lake Quarry No. 11	7/17/51	7/19/51	—	—	321	374
Baldwin Lake Quarry No. 12	7/17/51	7/19/51	—	—	321	375
			4/ 2/53	4/10/53	330	286
Baldwin Lake Quarry No. 13	7/17/51	7/19/51	—	—	321	376
			4/ 2/53	4/10/53	330	285
Baldwin Lake Quarry No. 14	7/17/51	7/19/51	—	—	321	377
			4/ 2/53	4/10/53	330	287
			10/10/55	10/13/55	377	568
			11/22/55	11/28/55	380	344
Baldwin Lake Quarry No. 15	8/18/51	8/22/51	—	—	322	146
			11/22/55	11/28/55	380	345
Baldwin Lake Quarry No. 16	8/18/51	8/22/51	—	—	322	147
			11/12/54	11/15/54	348	108
			9/26/55	9/30/55	377	213
			11/22/55	11/28/55	380	346
Baldwin Lake Quarry No. 17	8/ 8/51	9/ 5/51	—	—	322	231
			10/24/55	10/26/55	378	319
Baldwin Lake Quarry No. 18	9/ 5/51	9/12/51	—	—	322	292
			9/26/55	9/30/55	377	214
			11/22/55	11/28/55	380	347
Baldwin Lake Quarry No. 19	12/ 4/51	12/11/51	—	—	323	278
			11/22/55	11/28/55	380	348
Baldwin Lake Quarry No. 20	8/12/52	8/12/52	—	—	328	5
			11/22/55	11/28/55	380	349

Note: Above Amendments made to correct errors discovered in original description prior to patent application.

MOTION FOR SUMMARY JUDGMENT ON ISSUE OF EJECTMENT ONLY FOR DISMISSAL OF COUNTERCLAIM; NOTICE OF MOTION; MEMORANDUM IN SUPPORT OF MOTION—Filed July 16, 1964.

COMES NOW plaintiff, UNITED STATES OF AMERICA, by Francis C. Whelan, United States Attorney, Southern District of California, and Ernestine Tolin, Assistant United States Attorney, its attorneys of record, and pursuant to Rule 56 of Federal Rules of Civil Procedure, as amended July 1, 1963, moves this honorable court for a summary judgment against the defendants herein on the issue of ejectment only, and for dismissal of defendant Coleman's counterclaim, in its favor, in the form of the proposed Findings of Fact, Conclusions of Law and proposed judgment, lodged herewith, on the ground that on the undisputed material facts as alleged by plaintiff in its complaint and as substantiated by said defendants in their answer herein filed on June 26, 1964, plaintiff is entitled to have said summary judgment adjudicating that the possession by the defendants of the land described as Sections 1, 2, and 12, Township 2 North, Range 1 East, and Sections 6 and 7, Township 2 North, Range 2 East, S.B.B.&M., in the County of San Bernardino, State of California, is and has been without any right, title or interest in and to aforesaid property; that plaintiff is the rightful owner thereof and entitled to recover the possession thereof; that defendants be restrained and enjoined from occupying said property and premises and/or using said property for any purpose whatsoever or otherwise interfering with plaintiff's right to administer, possess and control said property.

This motion for summary judgment is based upon the following:

1. The entire administrative record of the proceedings in Contest No. 6833 (Los Angeles, California), herewith lodged with the Clerk of the court, an index to which is hereto attached as plaintiff's Exhibit 1.

2. The admissions by defendants in their answer filed herein on June 26, 1964, that:

a. Defendant Alfred Coleman has occupied, possessed, and claimed, and still does occupy, possess, and claim title to 18 placer mining claims fully described in Exhibit A to defendants' answer, which claims are, by defendants' own allegations, located on the public domain (paragraph III of answer, pages 2 and 3);

b. That the defendant Edward J. McClellan had an agreement with the defendant Alfred Coleman to work the mining claims herein described; that said contract terminated August 11, 1962; and that Edward J. McClellan has no interest in said placer mining claims herein described (paragraph VIII, page 9 of answer);

c. Defendant Alfred Coleman admits to service upon him of the complaint in the Government's Contest No. 6833 against patent application of said defendant (paragraph IV, page 4, lines 22 and 23 of answer);

d. Defendant Alfred Coleman admits of a hearing before the Hearing Examiner on said Contest No. 6833 and admits of an appeal to the Bureau of Land Management by both the Forest Service and defendant from the decision rendered by said Hearing Examiner on December 18, 1958 (page 6, line 31 and continuing in first paragraph on page 7);

e. Defendant Alfred Coleman admits filing a brief on said appeal with the Bureau of Land Management and admits to notice of the receipt of the decision rendered thereon (page 7 paragraph 3(b));

f. Defendant Alfred Coleman admits his appeal from said decision, and admits being afforded an opportunity to file his brief on said appeal to the Secretary of the Interior (page 8, lines 1 to 11);

g. Admits that he knew of the decision of the Solicitor's office dated March 27, 1962, declaring that said mining claim was null and void (page 8, lines 9 to 11);

h. Admits that defendant does not have a mineral patent in and to the 18 placer mining claims to which he claims title (page 11, paragraph III), and admits that defendant Alfred Coleman continues to hold, use, and claim the same, contrary to the decision of the Secretary of the Interior, acting through the Solicitor (pages 2 and 3, paragraph III; pages 9 and 10, paragraph IX).

3. The evidence that the defendant Alfred Coleman herein has had due and reasonable notices of all acts and actions taken throughout the administrative proceedings herein and that defendant Alfred Coleman was afforded full opportunity to appear in person or by briefs at all of said pro-

ceedings as shown by the entire administrative record lodged with the court herewith, and from which it is shown that the proceedings at all of the hearings and appeals set forth in defendants' answer were regular and proper, and not arbitrary, capricious, or otherwise unlawful.

4. Upon the attached memorandum in support of plaintiff's motion, and upon the pleadings, record, and files herein.

5. That upon the decision of the Secretary of the Interior, acting through the Solicitor, the mining claims of said defendant were found to be invalid; that thereafter the occupation, possession and use by said defendant of the property in this action described is a prohibited occupation and possession and constitutes a trespass as a matter of law under Federal Regulations, T-9(b).

6. That the counterclaim of the defendant Alfred Coleman raises no issue of fact, but questions of law and that determination of the plaintiff's motion herein will also be dispositive of the claims stated in Alfred Coleman's counterclaim. (See *Adams* v. *United States,* 318 F.2d 869, wherein the court states:

> ("The counterclaims which have been analyzed above state no basis for relief other than the negative of the Government's theories. It follows that the determination of the Government's claims is adjudicatory and injunctive relief which, except in one respect, was properly made by summary judgment, is also dispositive of the claims asserted in Adams' counterclaims.").

7. That all issues raised by said defendants in their answer herein are questions of law and not of fact.

Dated: This 16th day of July, 1964.

Francis C. Whelan, United States Attorney. Ernestine Tolin, Assistant U. S. Attorney. By Ernestine Toline, Attorneys for Plaintiff.

ET:mp 7/16/64

AFFIDAVIT OF ALFRED COLEMAN IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—Filed August 18, 1964.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA, County of Los Angeles, ss:

ALFRED COLEMAN, being duly sworn, deposes and says:

1. I am one of the defendants in the above entitled case. Mrs. Edna Coleman and I were the locators of the 18 stone placer mining claims involved herein. Mrs. Edna Coleman passed away, and I am now the sole owner of the 18 claims.

When I decided to apply for a United States Mineral Patent on the claims, I prepared the application myself. When a contest was filed, I handled that myself, and handled the appeals to the Bureau of Land Management and to the Secretary of the Interior.

As a result, I am fully cognizant of the matters involving these claims and the legal proceedings in connection therewith.

2. I have been active in connection with mining and mining machinery since 1917, and a licensed engineer since 1920; and, therefore, know minerals, mining tools, equipment and machinery used in connection therewith, and the cost and values of work done on mining claims.

3. In 1917 and 1919, I made 80 round trips on the Great Lakes transporting iron ore, coal and limestone, and became acquainted with the operation of mass mining developments and mineral handling. We would loan a 7,000-ton ore carrier in one and one-half hours.

In 1918, I was an erecting machinist and erecting inspector on 27,000 horsepower turbines to be used on Navy torpedo boats. I assembled said turbines and later supervised the erection and some of the tests of said turbines.

In 1920, I received my marine engineer's license and first-class stationary engineer's license. The same year I took drafting and practical electricity work.

I built and constructed triple expansion marine engines, and assisted in the construction of the first successful diesel electric locomotive built in the United States. This was built by the joint efforts of Ingersoll Rand Company (at the Phillipsburg, New Jersey Plant), General Electric and Baldwin Locomotive Works.

In 1924, I was sent by Ingersoll Rand Company to Pasadena as Erecting Engineer to, and did, supervise the installation of all the Ingersoll Rand Equipment at the Pasadena Municipal Light & Power Plant, Raymond and Glenarme Streets, Pasadena, California. I was in charge of Ingersoll Rand Company's Service Department in this territory from 1924 through 1928. During this period I supervised the erection of all Ingersoll Rand Company equipment in the dry gas holders, one of which is located at Lyons Street near Macy, and one at the corner of Western and Slauson Avenues, both in Los Angeles, California.

During this same period, I supervised the installation of mining machinery at the United States Borax Company, at Boron, California, and the Potrero Gold Mining Company, at Alamo, in Lower California.

I also supervised the installation of the first gas lift oil well pumping equipment at a well in Signal Hill owned by the E. J. Miley Company, Signal Hill, California.

I installed an oil engine generator at the Tonopah-Belmont Copper Company, near Gila Bend, Arizona; and an oil engine-driven compressor for a mining operation at the plant of the American Molydenum Company at the Leviathan Mine in Arizona.

During this period, I supervised the repair of mining equipment at the United Verde Copper Company at Prescott and Jerome, Arizona, and at many other mining enterprises.

This four years' experience and daily contacts with mining superintendents and operators, and the installation and repair of mining equipment, educated me as to the proper method of operation to attain efficient economical production in mass mining operation.

4. When I discovered this deposit of rock, in the San Bernardino Mountains, which extends from the top of the mountain, 8227 feet, to a depth of 4500 feet altitude (below surface of lake bed, as substantiated and set forth in Special Report 31, Geology of the Johnston Grade Area, Report by State of California geologist), I realized that a substantial area must be claimed as sufficient must be available to warrant the expenditure of considerable sums of money for equipment to produce economically.

5. The first claims were filed in February 1949. I have

spent my entire time since that date developing these claims. I have produced ornamental building stone, and other quartzite products, since that date sufficient to support my family and myself and sufficient to make available money for this continuous development of the claims.

6. The patenting of these claims will permit me to finance the operation of this rock discovery and produce not only ornamental stone but numerous by-products of this quartzite deposit.

7. The following are conservative figures as to assessment work done and expenditures made to the date of the original hearing:

(a)	Survey	$ 2,400.00
	30 days, 8 hours per day at $10.00 per hr.	
(b)	Office, Shop & Living Quarters	8,500.00
(c)	Equipment for Assessment and Mining Purposes	10,000.00
(d)	Water Development	250.00
(e)	Roads	9,000.00
(f)	Quarry Faces	3,000.00
	Total	$33,150.00
(g)	Cost of Production of Mineral Sold	3,000.00

8. Prior to my filing of any claims, I consulted with the local Forest Ranger at Big Bear Lake, Leo P. Slattery, who exhibited to me a Directive from the Regional Forester to the effect that as of January 1950 the Regional Forester was not to sell stone or rock from the National Forest for commercial enterprises as the Department of Forestry had no means of policing quarries or properly handling such business in competition to private enterprise.

Based upon my conversation with Mr. Slattery and the contest of this Directive, I then filed my first claims.

9. In the development of these claims, I realized it was necessary I have an adequate supply of water and title to said water. I went and talked to Mr. Slattery; and with his cooperation and the cooperation of the Forestry Department, arrangements were made between the Department and me whereby I amended my mining claims so as to exclude therefrom the northern half of the Special Use Area,

whereby I granted certain easement rights to the Government. These arrangements are evidenced by the attached copy of correspondence dated June 17, 1950, by Leo P. Slattery to the Forest Supervisor, marked Exhibit A and made a part hereof; letter of August 31, 1950, by Leo P. Slattery to me, a copy of which is attached and marked Exhibit B; agreement to amend my mining claims, by an instrument dated September 4, 1950, a copy of which is attached hereto marked Exhibit C; Easement Agreement executed by me, granting to the United States Forest Service the right to the flow of water from spring being developed by me for 8 hours of each 24-hour period, copy of which instrument is attached hereto and marked Exhibit D.

10. It is my opinion that the Department of the Interior, or at least some of the employees thereof, are determined that mining claims shall be abolished and that no mineral patents shall be granted if it is possible to avoid it.

As proof of this, and in connection with the 18 claims herein involved, attention is directed to the contest filed herein by the Department. There were three (3) grounds of contest, as follows:

(a) The Lands embraced within the claims are not mineral in character;

(b) The minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery. (Note that "quantities" is merely referred to—there is no charge that there was no profit or marketability.)

(c) $500.00 has not been expended on Baldwin Lake Quarry Claims 7, 9, 11 to 19, inclusive:

(This has no relation to the validity of a mining claim)

11. In regard to the allegation of No Discovery, this is set forth fully in the Statement of Issues to which this Affidavit refers, and is made a part of the Opposition to plaintiff's Motion for Summary Judgment.

12. An examination of the transcript of the hearing will prove that more than $9,000.00 was expended on, or in connection with, the 18 stone placer mining claims. Therefore, the third charge was not sustained.

13. The Hearing Examiner, in his decision of December 18, 1958, found that five (5) of the claims, numbers 1, 4, 5, 8,

and 10 were valid. Since the claims were located before 1955, under Section 161 of the Mining Laws, the proof is that there was discovery on all 18 claims, and all of them are valid. This is particularly true of the five (5) claims found to be valid by the Hearing Examiner.

14. Attached hereto as Exhibits are photographs as indicated:

Exhibits E F G H I J K L M	All of which indicate the presence of mineral (Quartzite Stone) apparent to the very top of the mountain. L and M also show constructed road.
Exhibits I J K	Illustrate the Coloring present in this stone.
Exhibit N	Illustrates stone piled near shop, office and living quarters—— and the use of said stone in said shop, office and living quarters.
Exhibit O	Indicating use of this stone in fireplace.
Exhibits P Q R	All of which indicate use of this stone in Bank of America building, at Lake Arrowhead, California.

Alfred Coleman.

State of California,
County of Los Angeles.

Alfred Coleman, being first duly sworn, on oath says:

That he is one of the defendants in the above entitled action; that he has read the foregoing Affidavit and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters that he believes it to be true.

Alfred Coleman.

Subscribed and sworn to before me this 18th day of August, 1964.

Monta W. Shirley, Notary Public in and for said County and State.

[Official Seal]

Monta W. Shirley, Notary Public, California. Principal Office in Los Angeles County.

June 17, 1950.

FOREST SUPERVISOR
District Ranger, Big Bear

U—USES
Stillwell, Chas,
Wharf

Today I examined the site of the above special use on the north shore of Baldwin Lake in company with Alfred Coleman of Big Bear Lake, who has filed a mining claim on a rock slide adjacent to the special use site. Coleman's claim embraces part of the special use area, as is shown on the attached map.

The rock slide, which Coleman has developed over a period of two years with access roads, etc., for the production of building stone and allied products, lies northwesterly of the wharf special use across State Highway 18, but includes part of the wharf special use area. He claims that an alluvial cone which covers part of the special use area will yield sufficient stone for the production of terazzo stone and other products to hold it under the mining laws, with which he appears to be very familiar. He also desires it for a work area for housing part of his plant. A spring also lies in this area included in Coleman's claim and the special use, which he plans on developing for use in his mining and manufacturing operations there.

He has agreed to permit the spring to overflow his proposed reservoir for a period of at least eight hours per day for use by the Forest Service. The present flow of the spring appears to be at least fifty gallons per minute, so that it is likely that it will continuously overflow for our use in spite of Coleman's intended use.

The problem of the overlapping mining claim, I explained to Coleman, can be solved in either of two ways:

(1) The forest service can contest that part of his claim that overlaps the special use area and included the spring (which lies inside the special use area) and probably force him off of that part of his claim. This will probably require our disproving that Coleman's claim contains mineral of sufficient value to justify holding it in that area

where it overlaps the wharf special use site. As Coleman has pointed out, the wharf site has not been used since Baldwin Lake has dried up and only a partly demolished toilet building remains of the improvements formerly erected upon it. This would make our denying his claim thereon on the strength of the land's being used for recreation purposes rather untenable.

(2) A second solution, which I favor, is to revise the boundaries of the wharf special use so as to permit Coleman's mining claim to include the south half of the special use area, plus the spring. Coleman would then amend his location so as to exclude the north half of the special use area, permitting access to it over a road that lies just outside the land he desires, as is shown on the attached map. This would still provide us with about an acre for use as a wharf site and parking area, which is adequate.

Coleman would then develop the spring and agree in writing to permit our use of the overflow and to allow this spring to overflow for eight hours in each twenty four for our use. Then we would retain a wharf site and gain a water source which has been hitherto undeveloped and which would be valuable as a tanker fill and possible recreational use.

I discussed this briefly with Sanborn, when he was here this spring and he advised I write up the matter for your decision.

Coleman has been most friendly in his discussion of the matter and has stated that he has no desire to exclude our use of the shore of Baldwin Lake to the north of the alluvial cone.

Will you please let me know your thoughts in the matter so I can inform Mr. Coleman.

Leo P. Slattery.

UNITED STATES DEPARTMENT OF AGRICULTURE
Forest Service
San Bernardino National Forest
San Bernardino, California

Big Bear Ranger Station
Fawnskin, California

August 31, 1950.

U
USES
Stillwell, Chas
Wharf

Mr. Alfred Coleman
Box 322
Big Bear City, California

Dear Mr. Coleman:

You were not at home at your rock slide when I called there Tuesday evening. The purpose of my call was to wind up our negotiations regarding the mining claim you have located that covers the Stillwell boat landing on Baldwin Lake.

The Regional Forester's office has approved our proposal of permitting your mining claim on the south half of the wharf site provided you withdraw your claim to the north half of the wharf site and permit the Forest Service to use the waters of the spring in question for eight hours per day. This was the proposal that you and I worked out and agreed to.

The copy of the map enclosed indicates the areas involved together with the location of the spring.

If you will sign the enclosed agreement in the presence of a witness, who should sign as a witness, and return all the copies but one to this office, the arrangements will be completed.

Permit me to thank you for your cooperation in this matter and feel free to call upon me if you have any further questions.

Leo P. Slattery, District Ranger.

I, Alfred Coleman, being the owner of a mining claim, Baldwin Lake Quarry No. 1, and Baldwin Lake Quarry No. 10, on the north shore of Baldwin Lake in Section 7, T2N, R2E, S.B. M. which claim overlaps an area set aside for wharf use under a Special Use permit to Chas Stillwell by the U. S. Forest Service, in consideration for ONE DOLLAR ($1.00) and other benefits, the receipt of which is hereby acknowledged, do hereby agree to amend said mining claims so as to exclude therefrom that northern half of the Special Use area more fully described on the attached plat, and marked on the ground by monuments established by myself and Ranger Leo P. Slattery on June 17, 1950.

IN WITNESS WHEREOF, I have set my hand this — day of Sept. 4, 1950.

Alfred Coleman.

Witness: Richard Smith

Subscribed to and sworn to before me this 26th day of December, 1950.

E. S. Randall, Notary Public, In and for the County of Los Angeles, State of California.

My Commission Expires July 13, 1952.

Dorothy Bonacich, Witness.

Alfred Coleman 12-26-50.

Easement Agreement

I, Alfred Coleman, being the owner of a mining claim on the north shore of Baldwin Lake in Section 7, Township 2 North, Range 2 East, San Bernardino Base and Meridian, upon which claim there is located a spring having a flow of approximately fifty gallons per minute, in consideration of One Dollar ($1.00) and other benefits, the receipt of which is hereby acknowledged, do hereby agree to develop said spring forthwith, to maintain it in good condition, and to allow it to overflow for at least eight hours in each and every twenty-four hour period, and I hereby grant to the United States Forest Service the right to use the flow of said spring during such eight hour period for any purpose it may deem desirable.

In Witness Whereof, I have set my hand this — day of Sept. 4, 1950.

Alfred Coleman.

Richard Smith, Witness.

Subscribed to and sworn to before me this 26th day of December 1950.

E. S. Randall, Notary Public, In and for the County of Los Angeles, State of California.

Dorothy Bonacich, Witness.

Alfred Coleman 12-26-50.

[Exhibits P, Q and R, color photographs, are in pocket part of this Appendix.]

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND DISMISSAL OF COUNTERCLAIM—Filed December 7, 1964

Plaintiff brought this action for ejectment and damages. The Defendant Coleman filed an answer and counterclaim. On July 16, 1964, Plaintiff filed a motion for summary judgment on the issue of ejectment only, and a motion to dismiss the counterclaim on grounds that it simply raises the same questions as the complaint and answer. Defendant's answer and counterclaim raise a great many issues, most of which probably should be answered in favor of Plaintiff on the authority of *Adams* v. *United States,* 318 F. 2d 861 (CA 9) *Adams* v. *Witmer,* 271 F. 2d 29 (CA 9); but the motion for summary judgment must be denied for the following reasons:

(1) Defendant asserts that the Interior Department has secret instructions or regulations regarding cases such as this, and that because the decisions in this case were based on them, Defendant was prejudiced.

(2) If a secret regulation has been used here and it truly did materially affect the outcome of this case, a serious due process question is presented. See Argument before the Supreme Court in *Panama Refining Co.* v. *Ryan,* 293 U.S. 388; see also, *United States* v. *Smith,* 293 U. S. 633, which was dismissed on motion of the Solicitor General; and see Griswold, *Government in Ignorance of the Law—A Plea for Better Publication of Executive Legislation,* 48 Harv. L. Rev. 198 (1934).

(3) A party is entitled to a fair hearing on the basis of known, or at least knowable, laws and regulations. Even though the hearings and appeals have all the formal trappings of due process, if the outcome of this case was prejudiced because of some secret inter-departmental regulation or instruction, it cannot be said that Defendant was given due process.

(4) Merely presenting a copy of the open administrative record does not answer Defendant's contention. Plaintiff's failure to meet this assertion leaves a question of fact before the court which precludes a summary judgment at this time.

IT IS ORDERED that Plaintiff's motion for summary judgment and for dismissal of the counterclaim is denied.

It Is Further Ordered that the clerk of the court this day serve a copy of this order by United States mail on the attorneys for each of the parties appearing in the action.

Dated: December 7, 1964.

Wm. M. Byrne, United States District Judge.

Motion for Resubmission of Plaintiff's Motion for Summary Judgment on Issue of Ejectment Only; for Dismissal of Counterclaim; Notice of Motion; Filed Herein on July 16, 1964, and Notice Hereon—Filed Jan. 13, 1965.

Comes Now Plaintiff, United States of America, by its attorneys of record, and moves this honorable court for resubmission of plaintiff's Motion for Summary Judgment on Issue of Ejectment Only; for Dismissal of Counterclaim; Notice of Motion, filed herein on July 16, 1964, as supplemented by plaintiff's subsequent and new evidence as hereinbelow set forth.

That heretofore on December 7, 1964, the court filed herein its Order Denying Motion for Summary Judgment and Dismissal of Counterclaim on the ground that the defendants' assertion upon information and belief that there are secret instructions or regulations in the Department of the Interior concerning the handling of actions involving mining claims and particularly in connection with applications for mineral patents upon which the decisions in this case were based, which secret instructions damaged and prejudiced defendants, left open a question of fact before the court which precluded a summary judgment at said time.

That subsequent to the court's aforesaid order, on December 21, 1964, Ernest F. Hom, Assistant Solicitor, Branch of Land Appeals, Office of the Solicitor, Department of the Interior, made an affidavit for filing herein, wherein said Ernest F. Hom gave his oath that during the course of consideration of defendant Coleman's appeal to the Secretary and the preparation of the decision which was issued on March 27, 1962, in which said affiant participated, there were in existence no secret instructions or regulations of any kind affecting the action to be taken in mining contest cases generally or in the case herein in particular. That the original of said affidavit is filed contemporaneously herewith, and establishes that there were no secret inter-departmental regulations or instructions which prejudiced the outcome of the defendants' case.

Plaintiff further respectfully submits that it appears from the duly certified record of the administrative proceedings in Contest No. 6833, lodged herein on July 16, 1964, that each and all material relating to said entire proceedings are contained in said record as so certified to by the Bureau of Land Management of the Department of the Interior.

Plaintiff submits that ample evidence and ample law exist in said certified record of the administrative proceedings alone to sustain and substantiate the decision rendered in said administrative proceedings on March 27, 1962. Plaintiff affirms that upon the face of the open record itself, the decision of the Secretary of the Interior, Acting through the Solicitor, in said case is warranted by the facts therein revealed and the law therein cited, and is wholly justified without resort to facts, materials, regulations or laws extrinsic to that appearing in said administrative record.

Wherefore, plaintiff moves the court for resubmission to the court of plaintiff's Motion for Summary Judgment on Issue of Ejectment Only; for Dismissal of Counterclaim; Notice of Motion, filed herein on July 16, 1964, together with the points and authorities thereto attached, together with the Findings of Fact and Conclusions of Law on Motion for Summary Judgment on the Issue of Ejectment Only; for Dismissal of Counterclaim lodged herein on July 16, 1964, and Judgment lodged herein on July 16, 1964, together with all points and authorities submitted by plaintiff in its reply memorandum filed herein on August 19, 1964.

This motion is based upon the pleadings, records, and files herein, the points and authorities cited in the proceedings herein, the Affidavit of Ernest F. Hom, filed herewith, and upon the provisions of the Federal Rules of Civil Procedure in Rule 60(b)(6), Rule 15(d), and Rule 56(e).

Dated: This 13th day of January, 1965.

Manuel L. Real, United States Attorney. Ernestine Tolin, Assistant U. S. Attorney. By Ernestine Tolin, Attorneys for Plaintiff.

Notice

To the Defendants Alfred Coleman and Edward J. McClellan, and to their attorneys, George W. Nilsson, Monta W. Shirley and W. H. Weddell:

You Will Please Take Notice that on the 25th day of January, 1965, at the hour of 9:45 a. m., or as soon thereafter as counsel can be heard, the plaintiff, United States of America, will appear before the Honorable William M. Byrne, United States District Judge, in his courtroom in the United States Post Office and Courthouse, Los Angeles, California, and will then and there bring the foregoing motion on for hearing.

DATED: This 13th day of January, 1965.

Manuel L. Real, United States Attorney. Ernestine Tolin, Assistant U. S. Attorney. By Ernestine Tolin, Attorneys for Plaintiff.

ET: rw 1/12/64

Judgment on the Issue of Ejectment Only— Filed February 25, 1965

Plaintiff's Motion for Resubmission of Plaintiff's Motion for Summary Judgment on the Issue of Ejectment Only; for Dismissal of Counterclaim; Notice of Motion; Filed Herein on July 16, 1964; and Notice Hereon having come regularly before the court for hearing, plaintiff being represented by the United States Attorney, Manuel L. Real, and Assistant United States Attorney, Ernestine Tolin, the latter being present in court, and the defendants being represented by their counselors, George W. Nilsson, Monta W. Shirley, and W. H. Weddell, Mr. Nilsson and Mr. Weddell being present in court, and oral argument by counsel having been presented, and the court having considered the files, records and evidence in the case, including the entire certified record of the administrative proceedings, herein lodged with the court on July 16, 1964, and having determined that upon the filing herein by plaintiff on January 13, 1965, of the Affidavit of Ernest F. Hom, Assistant Solicitor, Branch of Land Appeals, Office of the Solicitor, Department of the Interior, denying the existence of secret instructions or regulations affecting the action taken in the Administrative proceedings herein, which said affidavit was not traversed or controverted by defendants, that no genuine issue of material fact exists, and that upon the undisputed material facts, plaintiff has a right to have judgment summarily entered herein in its behalf as a matter of law, the court herewith now

Orders, Adjudges and Decrees:

1. That the plaintiff, United States of America, is declared to be the sole owner of all right, title and interest in the lands described herein to the exclusion of any right, title or interest in any asserted mining claims or mining locations of the defendants herein.

2. That the counterclaim of the defendant Alfred Coleman herein be, and hereby is dismissed.

It Is Further Ordered, Adjudged and Decreed that the defendants herein, their agents, and others acting in concert with or participating with them, are each and all,

1. Restrained and enjoined from using, occupying or maintaining any structures, equipment or other personal properties on the land described in the complaint herein and set forth in detail in the answer of defendants,

2. Restrained and enjoined from entering upon, or being upon said lands for the purpose of using and occupying the same pursuant to any asserted mining claims of said defendants, or of either of them, or for the purpose of operating or using any claimed mining locations thereon, or for the purpose of doing any acts or things thereon related to or claimed to be related to said mining claims or mining locations.

3. Restrained and enjoined from interfering with, impeding, obstructing, or resisting plaintiff, United States of America, its officers or employees, departments or agencies, in any acts or things done or to be done in the exercise of the United States' complete control and dominion over said lands, upon condition that the defendants have 60 days from final jgmt on appeal or otherwise within which to remove or otherwise dispose of structures or any other property on said lands; and

4. That each party shall bear its costs of suit herein.

Dated: This 25th day of February, 1965.

Wm. M. Byrne, United States District Judge.

Presented By:

Manuel L. Real, United States Attorney. Ernestine Tolin, Assistant U. S. Attorney. By Ernestine Tolin, Attorneys for Plaintiff.

ET:rw 2/2/65

FINAL JUDGMENT—Entered May 12, 1965

Plaintiff and defendants, by their attorneys of record, having stipulated for trial on the issue of damages and trial on the issue of damages having come on regularly to be heard on the 11th day of May, 1965, at 2:00 p.m., plaintiff being represented by the United States Attorney, Manuel L. Real, and Assistant United States Attorney, Ernestine Tolin, the latter being present in court, and the defendants represented by their counsel, George W. Nilsson, Monta W. Shirley, and W. H. Weddell, Mr. Nilsson and Mr. Weddell being present in court, and testimony having been offered on the issue of damages herein and the court having considered the files, records and evidence in the case, and the defendants having offered no evidence on the issue of damages herein and the defendants having waived cross-examination and argument on the issue of damages herein, now, therefore, based upon the files records and evidence herein submitted,

THE COURT NOW MAKES ITS FINAL JUDGMENT HEREIN AND HEREBY ADJUDICATES:

1. That the plaintiff, United States of America, is declared to be the sole owner of all right, title and interest in the lands described herein to the exclusion of any right, title or interest in any asserted mining claims or mining locations of the defendants herein.

2. That the counterclaim of the defendant Alfred Coleman herein be, and hereby is, dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants herein, their agents, and others acting in concert with or participating with them, are each and all,

1. Restrained and enjoined from using, occupying or maintaining any structures, equipment or other personal properties on the land described in the complaint herein and set forth in detail in the answer of defendants.

2. Restrained and enjoined from entering upon, or being upon said lands for the purpose of using and occupying the same pursuant to any asserted mining claims of said defendants, or of either of them, or for the purpose of operating or using any claimed mining locations thereon, or for the

purpose of doing any acts or things thereon related to or claimed to be related to said mining claims or mining locations.

3. Restrained and enjoined from interfering with, impeding, obstructing, or resisting plaintiff, United States of America, its officers or employees, departments or agencies, in any acts or things done or to be done in the exercise of the United States' complete control and dominion over said lands, upon condition that the defendants have 60 days from final judgment on appeal or otherwise within which to remove or otherwise dispose of structures or any other property on said lands.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff have and recover from the defendant, Alfred Coleman, as damages herein, a sum aggregating $1,877.50 due to plaintiff at the date of judgment herein, which said sum consists of restoration costs in the sum of $500.00 and rental at the rate of $40.50 per month for the occupation by Alfred Coleman of 2 acres of land at the place of operation where the machinery screening bins and house are located.

2. That the plaintiff have and recover from the defendant, Edward J. McClellan, as damages herein, the sum of $100.00.

DATED: This 11 day of May, 1965.

Wm. M. Byrne, United States District Judge.

Presented By:

Manuel L. Real, United States Attorney. Ernestine Tolin, Assistant U. S. Attorney. By Ernestine Tolin, Attorneys for Plaintiff.

Approved as to form and findings waived.

W. H. Weddell, George W. Nilsson, Attorneys for Defendants.

ET:rw 5/5/65

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 20,227

ALFRED COLEMAN and EDWARD J. MCCLENNAN, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

[June 21, 1966]

On Appeal from the United States District Court Southern District of California Central Division

Before: CHAMBERS and JERTBERG, Circuit Judges, and
THOMPSON, District Judge.

THOMPSON, District Judge;

Appellant has brought the case here to review the order of the District Court granting summary judgment to Appellee and dismissing Appellant's counterclaim. As originally filed by the United States, the suit was for rejectment [see ejectment] of Coleman from his mining claims in the San Bernardino National Forest. The claims had been contested by the United States at the instance of the Forest Service in proceedings before the Interior Department and found invalid. In the District Court, Appellant counterclaimed, seeking judicial review of the decision of the Interior Department under the Administrative Procedure Act, 5 U.S.C. 1001, et seq. The initial problem here is the appropriateness of Appellant's counterclaim as a vehicle to obtain judicial review.

We think it settled, at least in this Circuit, that although the Administrative Procedure Act does not permit a trial *de novo* of administrative decisions, *Noren* v. *Beck*, 199 F. Supp. 708 (D.C. S.D. Cal. 1961); *Adams* v. *United States*, 318 F. 2d 861 (9 CCA 1963), it does authorize and require judicial review under the standards of the Administrative Procedure Act, *Adams* v. *Witmer*, 271 F. 2d 29 (9 CCA 1959), *Denison* v. *Udall*, 248 F. Supp, 942 (D.C. Ariz. 1965), and that a counterclaim is a permissible method of obtaining such review. *Adams* v. *United States*, supra.

The District Judge rendered judgment for the United States on its complaint and dismissed Appellant's counterclaim, but he did so only after "having considered the files, records and evidence in the case, including the entire certified record of the administrative proceedings." (Tr. 224) In view of this statement, we deem the dismissal of the counterclaim as an affirmance of the decision of the Interior Department on the merits and not as a dismissal because of some procedural deficiency. This is so because the decision invalidating the mining claims is the sole foundation for the ejectment action.

The eighteen mining claims in question were located as building stone claims (30 U.S.C. 161)[1] on the dry bed of Baldwin Lake and an adjoining mountain within the San Bernardino National Forest during the period of 1949 to 1952. The claims cover an area of 720 acres. An application for patent was filed by Coleman in January, 1956, and a contest was commenced at the instance of the Forest Service on February 24, 1958, the charges being that:

"(a) The lands embraced within the claims are non-mineral in character.

"(b) Minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery.

"(c) $500.00 has not been expended on Baldwin Lake Quarry Claims No. 7, 9, 11 to 19, inclusive."

The Hearing Examiner, on December 18, 1958, found five of the mining claims to be valid and the other thirteen to be invalid. On appeal, the Acting Director of the Bureau of Land Management, on June 22, 1960, sustained the validity of three claims and part of a fourth. The Secretary of the

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[1] "§ 161. Any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims. Lands reserved for the benefit of the public schools or donated to any States shall not be subject to entry under this section. Nothing contained in this section shall be construed to repeal section 471 of Title 16 relating to the establishment of national forests."

Interior, acting through his Deputy Solicitor, in considering the appeal taken by Mr. Coleman, reviewed in detail the evidence introduced at the hearing on the contests. The Deputy Solicitor rendered a decision declaring all the subject mining claims to be null and void for the reason that a valid discovery had not been made. *United States* v. *Alfred Coleman,* A-28557, March 27, 1962. The ejectment action was filed August 8, 1963.

At the outset, we are faced with contentions by the Government seeking to limit the scope of judicial review of decisions in the Department of the Interior. This campaign commenced some years back when it was broadly contended that the Administrative Procedure Act does not apply to Decisions of the Secretary of the Interior. This Court had no difficulty in rejecting this contention. *Adams* v. *Witmer,* (9 CCA 1958), 271 F. 2d 29. Cf. *Wong Yong Sung* v. *McGrath,* 1950, 339 U.S. 33. Next, as in this case, the Secretary has argued that the determination of a question of fact by the "Secretary of Interior, or his authorized representative, is conclusive in the absence of fraud or imposition" and that "decisions of the Secretary of Interior with respect to public lands have historically been accorded a conclusiveness beyond that of typical regulatory agencies." These are not the standards for review provided in the Administrative Procedure Act adopted in 1946 [5 U.S.C. 1009(e)]. The Government supports the limited review of actions by the Secretary of the Interior with the footnoted excerpts from the following cases: *Cameron* v. *United States,* 1920, 252 U.S. 450;[2] *Standard Oil Co. of California* v.

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[2] Cameron v. United States, 252 U.S. 450, at p. 459:

"By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved. (Citations omitted.)

"A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws. If valid, it gives to the claimant certain ex-

United States (9 CCA 1940), 107 F. 2d 402, 410;[3] and

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clusive possessory rights, and so do homestead and desert claims. But no right arises from an invalid claim of any kind. All must conform to the law under which they are initiated; otherwise they work an unlawful private appropriation in derogation of the rights of the public.

"Of course, the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power, after proper notice and upon adequate hearing, to determine whether the claim is valid, and, if it be found invalid, to declare it null and void."

Cameron v. United States, 252 U.S. 450 at p. 464:

"Whether the tract covered by Cameron's location was mineral and whether there had been the requisite discovery were questions of fact, the decision of which by the Secretary of the Interior was conclusive in the absence of fraud or imposition, * * * [Citations omitted.] Accepting the Secretary's findings that the tract was not mineral and that there had been no discovery, it is plain that the location was invalid, as was declared by the Secretary and held by the courts below."

[3] Standard Oil Co. of California v. United States, 107 F. 2d 402, at p. 409:

"The disposal of the public lands is not a subject over which the 'judicial power' of the United States is extended. It is a field in which the authority of the Congress is supreme. Lee v. Johnson, 116 U.S. 48, 6 S. Ct. 249, 29 L.Ed. 570; Art. IV, sec. 3, clause 2, of the Constitution, U.S.C.A. Where Congress grants public lands to a state, reserving those known to be mineral as of the approval of the survey, it is thought that there is no constitutional impediment to its delegating to any instrumentality it may select the authority of determining, as a fact, what lands fall within the excluded class. Compare Shields v. Utah & Idaho R. Co., 305 U.S. 177, 59 S.Ct. 160, 83 L.Ed. 111. The state or its transferees obviously have no constitutional right to demand the property on terms differing from those imposed. Their claim to the land does not derive from the Constitution. Nor is the power of Congress, under the broad authorization of that document, so limited as to require the fact-finding

Best v. *Humboldt Mining Company,* 1963, 371 U.S. 334.[4]

agency to make its determination at or prior to the approval of survey.

"The problem, then, as we understand it, is not what authority Congress may confer upon the Secretary, but what authority it has conferred in relation to the administration of this grant. If Congress has clothed the Secretary with general authority to administer the grant, and if his decision of fact in this instance was made within the scope of such authority, there can be no doubt that his decision is conclusive on the courts, in the absence, at any rate, of fraud or imposition. The holdings to this effect are too numerous for citation, but among those apposite are Catholic Bishop of Nesqually v. Gibbon, 158 U.S. 155, 15 S.Ct. 779, 39 L.Ed. 931; Cameron v. United States, 252 U.S. 450, 40 S.Ct. 410, 64 L.Ed. 659; St. Louis Smelting & Refining Co. v. Kemp, 104 U.S. 636, 26 L.Ed. 875; Wright v. Roseberry, 121 U.S. 488, 7 S.Ct. 985, 30 L.Ed. 1039; Burke v. Southern Pacific R. Co., 234 U.S. 669, 34 S.Ct. 907, 58 L.Ed. 1527; Johnson v. Drew, 171 U.S. 93, 99, 18 S.Ct. 800, 43 L.Ed. 88."

Standard Oil Co. of California v. United States, 107 F. 2d 402 at p. 410:

"Of course, in order to give conclusive effect to his decision, the Secretary's power in the premises must be exercised within the limits of due process, that is, after notice and hearing and upon evidence. Cameron v. United States, supra; Crowell v. Benson, supra; Shields v. Utah & Idaho R. Co., supra. Compare Iron Silver M. Co. v. Campbell, 135 U.S. 286, 10 S.Ct. 765, 34 L.Ed. 155. But there is here no question of due process. Appellants participated in the proceeding before the department and make no complaint that they were not accorded full opportunity to present their evidence."

[4] Best v. Humboldt Mining Company, 371 U.S. 334, at p. 336:

"* * * the department has been granted plenary authority over the administration of public lands, including mineral lands; and it has been given broad authority to issue regulations concerning them."

Best v. Humboldt Mining Company, 371 U.S. 334, at p. 337:

"'Due process in such case implies notice and a hearing.

Our study of these decisions and others has not persuaded us that Congress intended decisions of the Department of the Interior which reject applications for patents to enjoy a more favored position than those of other executive agencies under the Administrative Procedure Act. The *Cameron* case was decided in 1920, some twenty-six years before the Congress had spoken with respect to the scope and standards of judicial review of administrative rulings. Similarly, the *Standard Oil* case in this Circuit was decided six years before the adoption of the Administrative Procedure Act. Nor do we find in the *Best* case any support for the Government's present contentions. True, in that opinion Justice Douglas complimented the work of former Justice Van Devanter and quoted extensively from his opinion in *Cameron.* But the issue decided in *Best* was whether the Government could contest a mining claim administratively during the pendency of a condemnation action, and the Court explicitly, in Fn. 7 (371 U.S. 338), alluded to the present procedures: "Claimants *today* may appeal the Examiner's decision to the Director of the Bureau (43 CFR, 1962 Supp., § 221.1), from him to the Secretary (id., § 221.31), and from there to the courts. Foster v. Seaton, 271 F. 2d 836." Also, in *Best,* the Court significantly refrained from commenting on the claimed onerousness of hearings in the Department as compared with court procedures, and said: "We express no views on those contentions, as each of them can appropriately be raised in the administrative proceedings, *and reserved for judicial review.*". [Emphasis added.]

It has long been established that a qualified entryman upon public lands of the United States, whether as a locator of a mining claim, as a homesteader, or as one asserting rights under others of the multifarious laws governing entries on public lands, who perfects his entry by compliance with the applicable Act of Congress, thereby acquires a right to the land as against the sovereign itself, as well as third persons. *Wilbur* v. *Krushnic,* 1930, 280

But this does not require that the hearing be in the courts, or forbid an inquiry and determination in the Land Department.' Orchard v. Alexander, 157 U.S. 372, 383. If a patent has not issued, controversies over claims 'should be solved by appeal to the land department and not to the courts.' Brown v. Hitchcock, 173 U.S. 473, 477. And see Northern Pacific R. Co. v. McComas, 250 U.S. 387, 392."

U.S. 306. It is such a legal right which Appellant here seeks to assert, and it is not a right which the Secretary of the Interior may, in his discretion, ignore or which he may reject "in the absence of fraud or imposition." This is precisely the kind of right which the Administrative Procedure Act, with its provisions for judicial review, was designed to safeguard from arbitrary, capricious and illegal deprivation by action of executive and administrative agencies. *Adams* v. *Witmer* (9 CCA 1959), 271 F. 2d 29.

The Government also argues that we are here dealing with a "collateral attack" upon final agency action rather than a direct review thereof, and that the judicial surveillance of agency action is, therefore, under a more restrictive standard. The argument is made because after the Secretary's final decision on March 27, 1962, nothing was done by anyone until the United States filed this ejectment action on August 8, 1963. Appellant then sought review of the agency action by counterclaim. *Adams* v. *United States* (9 CCA 1963), 318 F. 2d 861, involved a similar procedural situation and a dictum there [p. 867] suggested a possible distinction. Upon reflection, however, we cannot discern any reason for a difference respecting the scope and character of review of agency action which would depend upon who commenced the action. This should not be a race to the courthouse. There is no statutory time limit for an aggrieved person to seek judicial review of agency action in the Department of the Interior under 5 U.S.C. 1009.[5] So far as the Government's present contention is concerned, had Coleman brought an action to review the Secretary's decision one day before the eviction suit was filed, this would have been a direct review rather than a so-called "collateral attack." It serves nothing to talk about collateral attack merely because review of agency action is sought in a counterclaim rather than in a complaint.

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[5] While the statute (5 U.S.C. 1031, et seq.) which vests exclusive jurisdiction in the Courts of Appeals to review final orders of certain federal agencies limits the time for such petitions (§ 1034), we find nothing in the Administrative Procedure Act (5 U.S.C. 1009) relating to review of agency action generally, nor in the Department of Interior rules and regulations, which prescribes a time limitation for district court actions to review final administrative determinations.

The issues, then, which faced the District Court are those provided in the Administrative Procedure Act. Were the "agency action, findings and conclusions . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence?" 5 U.S.C. 1009(e)(B)(1)(5).

In one form or another, each of the decisions rendered within the Department in this case was based upon the issues raised by the second charge of the contest, (b), that a valid discovery had not been made.

In order to validate a mining claim under the mining laws of the United States, there must be a discovery of a valuable mineral deposit within the limits of the claim 30 U.S.C. 23, 25. The basic test used to determine whether such discovery has been made was stated by the Department in *Castle* v. *Womble,* 19 I.D. 455, 457 (1894), to be that:

> "* * * where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met."

The standard has been judicially approved. *Chrisman* v. *Miller,* 197 U.S. 313; *Cameron* v. *United States,* 1920, 252 U.S. 450; *Best* v. *Humboldt Mining Co.,* 1963, 371 U.S. 334.

All mining claims must meet this test to be valid. An additional element to the test of discovery, that of present marketability, has been imposed by the Department where the mineral in question is one of widespread occurrence. The reason for this additional element was made clear in *Foster* v. *Seaton,* 271 F. 2d 836, 838 (1959):

> "With respect to widespread non-metallic minerals such as sand and gravel, however, the Department has stressed the additional requirement of present marketability in order to prevent the misappropriation of lands containing these materials by persons seeking

> to acquire such lands for purposes of other than mining."

On July 23, 1955, Congress enacted what is now Section 611 of Title 30, United States Code. Section 611 provides, in part, that "No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders . . . shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws * * *." The purpose of § 611 is clearly revealed in the following quotation from House Report 730, 84th Cong., 1st Sess., 1955, U.S. Congressional & Administrative News, p. 2478:

> "The Committees on Interior and Insular Affairs of both the House and Senate have in the past several years been made increasingly aware of the abuses under the general mining laws by those persons who locate mining claims on public lands for purposes other than legitimate mining activity."

Thus, by enacting § 611, Congress addressed itself to the very problem which the *Foster* v. *Seaton* test was designed to resolve. Although *Foster* v. *Seaton* was decided in 1959, it was a review of a Secretary's decision on a contest initiated before 1955 and applied an Interior Department decision made in 1933 in *Layman* v. *Ellis,* 54 I.D. 294.

The Department's use of Section 611 in this case, as reflected by the final agency decision, constitutes a misapplication and misconstruction of the statute. In the final decision, the Deputy Solicitor stated:

> "* * * Since the Congress withdrew common varieties of building stone, sand and gravel from location under the mining laws on July 23, 1955 (30 U.S.C., 1958 Ed., sec. 611), it was incumbent upon Coleman to show that all the requirements for discovery of a valuable mineral deposit, including a showing that these materials could have been extracted, removed, and marketed at a profit, had been met by that date * * *.
>
> "In view of the immense quantities of identical stone in the area outside the claims, the stone must be

> considered a 'common variety' within the meaning of the act.
>
> "* * *
>
> "The only issue in dispute at the hearing on September 16, 1958, was the existence of a market for profitable sales before July 23, 1955. * * * I am unable to find evidence which supports such conclusion as to any of the claims."

We disagree and conclude that proof of discovery as of the time of the contest proceedings is all that is required in this case; that is, that contrary to the Department's assumption, the term "stone" in § 611 does not include "building stone" as that term is used in § 161 and that, therefore, § 611 does not apply at all.[6]

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[6] The Department's interpretation of § 611 as including building stone is at least its second attempt in the history of the mining laws to exclude building stone from the coverage of those laws. The first attempt was thwarted by Congressional action, and we do not believe that the present one is sustainable. The earlier history of building stone as a locatable mineral was succinctly stated in House Report 1204, 52nd Congress, 1st Session, as follows:

> "In the case of Rosse vs. Wainman, 14 M. & W., 859, (same case, 2 Exch., 200, and 15 L.J., 67), it was held (quoting syllabus):
>
> " 'The term "mineral" is more frequently applied to substances containing metals, but in its proper sense includes all fossil bodies or matters dug out of mines; in this sense beds of stone may be included in the word minerals.'
>
> "So in the case of Micklethwait vs. Winter, 6 Exch., 644 (same case, 5 Eng. L. & E., 526); and Midland R. Co., vs. Checkley, Law R., 4 Eq., 24, it was held that stone taken from quarries is a mineral.
>
> "The above has been the construction given the mining laws of the United States by the Interior Department since the act of 1872 was passed, until a very recent date, and even now all kinds of stone are held to be subject to mineral entry except building stone, the test applied being uniform with regard to all mineral substances, viz, whether or not the land containing such substance is more valuable there-

One of the methods adopted by Congress in 1955 to curtail abuses of the mining laws was the exclusion from previously locatable minerals of common varieties of sand, gravel, pumice, pumicite and cinders. Yet, recognizing that this statutory barrier to abuses of the mining laws was so broad as to cover non-abusive mining claims, the Congress narrowed the scope of the Act by defining "common varieties" in a limited way. As stated in House Report 730, supra: "The last sentence of this section declares that—

> " 'Common varieties' as used in this Act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value * * *,

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for than for agricultural purposes. In the case of Conlin vs. Kelly, decided in the Department January 2, 1891, and reported in 12 Land Decisions, 1, however, it was held that lands which contain deposits of building stone only are not subject to entry under the mining laws. This decision has brought dismay and threatened ruin and disaster to many citizens who in good faith, relying on the settled and long-continued procedure of the General Land Office, had invested large sums of money in the development of stone quarries upon the public lands, expecting to obtain patents under the mining laws. It changes what had become a recognized rule of property, and the committee think this is a matter which justly demands the action of Congress to fix the status of such lands without the possibility of doubt."

Accordingly, Congress enacted Section 161 "to fix the status" of building stone lands. Cf. *Northern Pacific Ry.* v. *Soderberg* (1903), 188 U.S. 526. Graceful acceptance of this Congressional mandate proved impossible for the Department in the long run. First the present marketability requirement as expressed in *Foster* v. *Seaton* was applied to the exclusion of the *Castle* v. *Womble* test of discovery, thereby imposing an onerous burden on the building stone miner. Then followed the attempt to use § 611 to eliminate building stone as a discoverable mineral, an interpretation of that section which we believe was not intended by the Congress.

which language would exclude materials such as limestone, gypsum, etc., commercially valuable because of 'distinct and special' properties." As finally enacted, § 611 also excluded from its "common varieties" classification "so-called 'block pumice' which occurs in nature in pieces having one dimension of two inches or more."

When § 611 was enacted, Congress was of necessity well aware of its earlier statute (Sec. 161) respecting building stone. Nowhere in the available legislative history of § 611 is there found any indication of a Congressional intent to repeal § 611. Certainly there was no express repeal, and repeals by implication are not favored. *United States* v. *Zacks,* 375 U.S. 59 (1963); *Silver* v. *New York Stock Exchange,* 373 U.S. 341, rehearing denied 375 U.S. 870 (1963). It is a settled rule of statutory construction that a general law is not held to repeal or supersede an earlier specific law in the absence of a definite expressed intention: *Stewart* v. *United States* (9 CCA 1939), 106 F. 2d 405; *Anderson* v. *Gladden,* D.C. Ore. 1961, 188 F. Supp. 666, aff. 293 F. 2d 463. Stone which is chiefly valuable as building stone is, by that very fact, not a common variety of stone. Thus § 611 does not bar location of mining claims for building stone under § 161. The Department's "quantity equals common variety" formula is not consistent with either the letter or the spirit of the 1955 statute, and represents a departure from the earlier and, we think, correct position of the Department as expressed by the Bureau of Land Management in two letters appended to Appellant's brief.[7] One letter, dated October 11, 1957, signed by Max Caplan "for the Director", states: "Stone, commercially valuable because of distinct and special properties, such as * * * stone suitable for cutting into blocks or naturally cleavable into slabs for building purposes, * * * would not be considered common varieties."

The other letter, dated February 9, 1959, signed by W. L. Shafer "for the Director" contains virtually identical language. Whether or not these letters represent an official position of the Department need not concern us as we decide, as a matter of law, that the existence of § 161 precludes application of § 611 to building stone.

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[7] These letters are not part of the evidentiary record before this Court. However, as an aid to our decision of a matter of law, we believe it proper to notice them.

The Interior Department decisions and regulations and Court rulings over the years have been interpretations of the General Mining Law of 1872 (17 Stat. 91), which, with respect to the validity of mining locations and applications for patents of mining claims, has remained virtually unchanged since enactment. The problem here presented concerns the interpretation of "valuable mineral deposit" (30 U.S.C. 22) and "valuable deposits" (30 U.S.C. 29) as used by the Congress. See: *Adams* v. *United States* (9 CCA 1963), 318 F. 2d 861, 870. Since *Castle* v. *Womble,* supra, the basic, judicially approved, standard of discovery of a valuable mineral requires proof that a person of ordinary prudence would be justified in further expenditure of his labor and means, with reasonable prospect of success, in developing a paying mine. "But value, in the sense of proved ability to mine the deposit at a profit need not be shown." *Adams* v. *United States,* supra. This is clearly the standard applied to metallic minerals and minerals of limited occurrence. There is nothing in the mining laws which justifies a different standard for nonmetallic minerals or minerals of widespread occurrence insofar as proof of a "valuable" mineral discovery is involved. In fact, with respect to building stone, the Congress has expressly stated: "Any person authorized to enter lands *under the mining laws* of the United States may enter lands that are chiefly valuable for building stone *under the provisions of law in relation to* placer-mineral claims." 30 U.S.C. § 161. (Emphasis added.) Thus it was implied that building stone claims must meet the same standards, and no greater standards, than those for the discovery of other valuable minerals. Cf. *Mulkern* v. *Hammitt,* (9 CCA 1964), 326 F. 2d 896, sand and gypsum claims.

What, then, is the import of *Foster* v. *Seaton* (D.C. Cir. 1959), 271 F. 2d 836, and the Interior Department decisions which it followed? On casual reading, it appears to add additional, administratively imposed, non-statutory requirements for the discovery of "valuable" minerals of widespread occurrence. These are: "Accessibility, bona fides in development, proximity to market, existence of present demand and other factors (to show that) the deposit is of such value that it can be mined, removed and disposed of at a profit." As interpreted by the Department of the Interior in the present case, as well as others, these are tests of the discovery of a "valuable" mineral deposit and have resulted in an absolute requirement that the locator prove a present profit, in derogation of the rule of *Castle* v. *Womble*. We suggest that this is an incorrect interpretation of the *Foster* case for the following reasons: (1) There is nothing in the general mining law authorizing location of valuable minerals which justifies, or even suggests, a distinction between minerals of widespread occurrence and minerals of more limited occurrence; thus, the interpretation is not based upon the voice of Congress but is legislative in character; (2) the purpose of the requirements is "to prevent the misappropriation of lands containing these materials by persons seeking to acquire such lands *for purposes other than mining*" (*Foster* v. *Seaton*, 271 F. 2d at 838), an objective which is substantially unrelated to the factual determination of discovery of a "valuable" mineral under the *Castle* v. *Womble* criteria; (3) the Interior Department decisions after the leading case, *Layman* v. *Ellis*, 52 I.D. 714, 54 I.D. 294, represent misapplications and unwarranted extensions of the expressed rationale and basis of that decision; and (4) at least one of the requirements stated, "bona fides of development", has nothing at all to do with proof of present marketability at a profit.

We think that *Foster* v. *Seaton*, on proper analysis, is judicial recognition of the requirement of the good faith of the applicant for a mineral patent, a requirement which finds a foundation in the Act of Congress, for 30 U.S.C., § 29 provides: "A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person * * * having claimed and located a piece of land *for such purposes* * * * may file, etc." This is an explicit statement that the purpose and motive of the applicant are proper subjects of inquiry and that if the claims were located in bad faith and not for the purpose of mining valuable mineral deposits, the application for patent may be rejected.[8]

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[8] This implication from the mining laws is recognized in the Departmental regulations:

43 C.F.R. 3413.1: "No lode claim shall be located until

The confusion which has been caused by the Department's efforts to distinguish between non-metallic and metallic minerals and between minerals of limited and of widespread occurrence in defining standards for a discovery of valuable mineral under the mining laws, distinctions which have no basis in the statutes, is demonstrated in the mining texts, American Law of Mining, Vol. I, § 4.26, pp. 646-647:

> "While the Land Department decisions do present some rather extreme examples of stringency and harshness in applying the prudent man test to mining claims, this should not be taken to indicate that the same rigid standards will be applied in all cases, especially where there have been no withdrawals; no one has protested the issuance of patent; a contest has not been instigated by the Forest Service or other agency; and the claims are in fact located in good faith for the purpose of acquiring the land because of its mineral deposits. The Land Department has not looked favor-

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after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to *prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors,* before sufficient work has been done to determine whether a vein or lode really exists."

43 C.F.R. 3452.1 (pertaining to proving title under 30 U.S.C. 38): "When an applicant desires to make his proof of possessory right in accordance with this provision of law he * * * will be required to furnish * * * any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides * * *."

43 C.F.R. 3470.3: "In placer applications, in addition to the recitals necessary in and to both vein or lode or placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation *and* that title is sought not to control water courses or to obtain valuable timber but *in good faith because of the mineral therein.*" (Emphasis added.)

> ably upon attempts to acquire public domain land having values for subdivision, recreational, timber or other uses by the device of locating mining claims for minerals which are sometimes of dubious value. If not convinced of the good faith of the mining claimant in such situations, it seems probable that the mineral examiners, hearing officers and other officers and agents of the Land Department will take a very strict view of mining locations in such areas and that the prudent man test will be applied very strictly, verging on a commercial value requirement, even where the minerals in question have intrinsic value.
>
> "This is not to say that mining claims cannot be legitimately made and the discoveries thereon supported where the land is valuable for reasons other than its mineral content, but the burden of sustaining such claims is greatly increased in such cases."

The leading Interior Department decision from which stems the present departmental requirement of proof of present marketability at a profit for patentability of locations claiming minerals of widespread occurrence is *Layman* v. *Ellis,* (1929), 52 I.D. 714, aff'd 54 I.D. 294. The first decision, holding sand and gravel to be locatable minerals, does not discuss the requirements for proof of discovery of valuable minerals, but cites *Lindley on Mines,* § 98:

> "The mineral character of the land is established when it is shown to have upon or within it such a substance as—
>
> "(a) Is recognized as mineral, according to its chemical composition, by the standard authorities on the subject; or—
>
> "(b) Is classified as a mineral product in trade or commerce; or—
>
> "(c) Such a substance (other than the mere surface which may be used for agricultural purposes) as possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts;—
>
> "And it is demonstrated that such substance exists therein or thereon in such quantities as render the land

> more valuable for the purpose of removing and marketing the substance than for any other purpose, and the removing and marketing of which will yield a profit; or it is established that such substance exists in the lands in such quantities as would justify a prudent man in expending labor and capital in the effort to obtain it."

The decision concludes that "valuable gravel deposits fall within categories (b) and (c) of Mr. Lindley." It is noted that Lindley suggested proof of present marketability at a profit as an alternative to the *Castle* v. *Womble* test When Acting Solicitor (now Judge) Fahy reviewed and affirmed the decision (1933, 54 I.D. 294), he explained:

> "The main objection that appeared to the application of this principle to such commonplace substances as sand and gravel, was that it would render facile the acquirement of title to numerous areas containing sand and gravel for other purposes than mining, but this objection may be urged with as much reason against other mineral substances of wide occurrence and extent which under the same limitations and qualifications are locatable and enterable under the mining law, such as, for example, limestone, marble, gypsum, and building stone. Furthermore, the objection mentioned is not of much force when it is considered that the mineral locator or applicant, to justify his possession, must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit. Cases have been frequent where the Department has refused patent to lands containing the mineral substance last mentioned in abundance, where the evidence as to the value of the deposit was insufficient or lacking. No reason is seen, therefore, to overrule the case of Layman et al. v. Ellis. It follows that sand and gravel which can be extracted, removed, and marketed at a profit, obtained from land that has been duly and properly located under the mining law as a placer claim, may be lawfully disposed of for use, not only on Federal aid highways, but for other purposes."

This is the genesis of the Department's absolute requirement of proof of present marketability at a profit to sustain a location of minerals of widespread occurrence. *Estate of Victor E. Hanny,* 63 I.D. 369 (1956); *United States* v. *Everett Foster, et al.,* 65 I.D. 1 (1958), aff'd *Foster* v. *Seaton,* 271 F. 2d 836 (1959); *United States* v. *Strauss,* 59 I.D. 129 (1945); *United States* v. *George W. Black,* 64 I.D. 93 (1957); *United States* v. *Barngrover,* 57 I.D. 533 (1942); *United States* v. *Fife,* A-28386 (Sept. 19, 1960); *United States* v. *Philip Jungert,* A-28199 (April 14, 1960); *United States* v. *Jacobo Armenta,* A-28248 (June 22, 1960). We think the foundation does not support the structure. The *Ellis* cases, as was articulated in *Foster* v. *Seaton,* deal with the purpose of the location, in essence, the bona fides of the claimant, and seek to preclude the seizure of public lands for purposes other than mining under the mining laws. We perceive no reason for a distinction between a placer claim allegedly for gold bearing sand and a placer claim for building stone with respect to the requirements for proof of presence of a valuable mineral. The prudent man test of *Castle* v. *Womble* should suffice for either. Cf. *Mulkern* v. *Hammitt,* supra, sand and gypsum; *Adams* v. *United States,* supra, sand and gold; *Henrikson* v. *Udall* (9 CCA 1965), 350 F. 2d 949, 229 F. Supp. 510, sand and gravel. In addition, the applicant may be required to show, if challenged to do so, that the claims were located in good faith for the minerals therein, and not for other unrelated purposes.

This, of course, is not to suggest that the *Foster* v. *Seaton* guidelines of accessibility, bona fides in development, proximity to market and existence of a present demand and other factors, are irrelevant as evidence bearing upon the ultimate issues of good faith and existence of a valuable mineral deposit. But these ultimate issues should be resolved in each case from the evidence as a whole and it is improper, in our view to convert one aspect of relevant evidence into an absolute legal requirement with respect to a certain class of minerals in derogation of a time-honored, judicially approved test of "value" applicable to all locatable minerals.

Inasmuch as this case should be remanded to the Department for reconsideration under correct legal standards, there are other matters which deserve brief comment. In his final decision, the Deputy Solicitor remarked that the Appellant did not make the required showing of marketability as to all claims. He said: "Whether expenditures for improvements on other claims may or may not be credited to these (disallowed) claims is immaterial because it is abundantly clear that there was no marketing of any products from these claims." The *Castle* v. *Womble* prudent man test does not require such a showing, although such evidence is, of course, relevant proof under the issue as to each separate mining claim. The *Castle* v. *Womble* test implies a forecast of the reasonably anticipable future. Further, the Department placed great weight upon Coleman's testimony that he had devoted over four thousand hours working on the claims for eight or nine years, which, computed at $3.50 per hour, meant an expenditure of $157,500 in labor, and concluded that Coleman could not conceivably have made a profit. We have found no case authority on the subject of whether the calculated value of a locator's labor in developing the property should be charged as an expense in determining profitability.[9] This may be

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[9] The Director of the Bureau of Land Management, in his decision in this case, minimized the weight of this testimony, saying:

"The record shows that stone has been removed and marketed from these claims ever since their location in 1949. Income from past sales has just about equalled the cost and value of improvements without allowance for any recompense to Mr. Coleman for his own labor. Be that as it may, it is good accounting procedure to amortize the cost of permanent improvements over a long period of time; current and/or future expenditures for maintenance will be far less than the initial costs. Under such circumstances, continued sales, even at the rate shown for the first ten years of operations have and will result in a livelihood to Mr. Coleman; he will realize a profit from operations over and above the value of his own labor. It matters not that the stone operations may not sustain a mammoth operation by a large company; it is sufficient that a prudent man be justified in expending labor and means with a reasonable prospect of success in developing a paying mine. Since a con-because the question has not arisen under the *Castle* v. *Womble* test of reasonable expectation of profit, while the Departmental requirement of proof of present profit for location of non-metallic minerals of widespread occurrence is of fairly recent origin. In any event, the history of prospecting and mining in the Western United States records the essence of individualism in economic activity and the Mining Law of 1872 was enacted as a Congressional codification of the procedures and practices of miners. Academic economics has little meaning for a miner and his "profit" is made if his receipts exceed his out-of-pocket expenditures, although he may be grossly underpaid for his labor.

Coleman represented himself in the evidentiary hearing before the Hearing Examiner in 1958 and throughout the administrative appeals. He was quite evidently bewildered by the Government's assertion that the claims were not mineral in character and that there had been no discovery of valuable minerals, relying with assurance, and some justification we have found, on 30 U.S.C. 161. Although he was properly guided by the Hearing Examiner, to a degree, his lack of awareness of the issues upon which the case was ultimately determined by the Secretary is evident. We think that if the Department of Interior intends to put in issue Coleman's good faith as an applicant for patent, it should so state in the contest complaint. Under the circumstances the whole proceeding should be remanded to the Department.

In summary, we hold:

1. The decision of the Secretary of Interior invalidating Coleman's building stone claims was properly before the District Court for review under the counterclaim.

2. The standards of review are those elucidated in the Administrative Procedure Act (5 U.S.C. 1009).

3. Congress, by enacting 30 U.S.C. 611, did not repeal 30 U.S.C. 161 concerning building stone, and proof of discovery of a valuable mineral is to be determined as of the date of the contest hearing and not as of July 23, 1955.

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tinuing and steady market, albeit not expanding, is shown to exist, and marketability of the product at a profit (even though not a great one) is shown, discovery within the meaning of the mining laws, all else being regular, is established."

4. The applicable criteria of presence of a valuable mineral in each of the claims is whether a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

5. If the good faith of the applicant in locating the ground for the asserted purpose of exploiting the minerals therein is an issue, the applicant for patent should be put on notice of the issue in the contest complaint.

6. The decision of the Secretary of the Interior invalidating Coleman's mining claims is not in accordance with law and, under the circumstances related, is arbitrary, capricious and an abuse of discretion, and should be set aside.

Accordingly, this case is remanded to the District Court with instructions to enter judgment denying plaintiff's prayer for ejectment and, on the counterclaim, reversing the final decision of the Secretary of the Interior and remanding the case to the Department of the Interior for further proceedings and decision in accordance with the principles herein enunciated.

George W. Nilsson, Los Angeles, California, was on the brief for Appellants.

George R. Hyde, Attorney, Department of Justice, Washington, D.C. (Edwin L. Weisl, Jr., Assistant Attorney General; Manuel L. Real, United States Attorney; Ernestine Tolin, Assistant United States Attorney; and Roger P. Marquis, Attorney, Department of Justice, with him on the Brief), for Appellee.

JUDGMENT

APPEAL from the United States District Court for the Southern District of California, Central Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is remanded to the said District Court with instructions to enter judgment denying plaintiff's prayer for ejectment and, on the counterclaim, reversing the final decision of the Secretary of the Interior and remanding the case to the Department of the Interior for further proceedings and decision in accordance with the principles herein enunciated.

Filed and entered June 21, 1966

PETITION FOR REHEARING

The United States of America, appellee, presents this, its petition for rehearing, and in support thereof respectfully shows:

I

The decision as written involves important questions constantly arising before this Court

The decision, if permitted to stand, will have a crippling effect on the administration of the mining laws on vast acreages of federally-owned lands.

It will undoubtedly be invoked in many cases before the district courts of this Circuit. It will consequently require interpretation by numerous decisions of this Court.[1] There are now pending nine cases before this Court on various aspects of this scope of review of decisions of the Department of the Interior. Because of the rejection of precedent (including several of this Court) in many particulars, it will increase, not decrease, the number of such appeals presented to this Court.

II

The decision was rendered without opportunity to petitioner to present controlling precedents on issues decided

The decision bears little resemblance to the arguments advanced by the appellants in this case. It decides many matters not briefed or argued. Petitioner has thus far had no opportunity to demonstrate the errors in the decision.

III

The decision ignores controlling Supreme Court decisions

A. On its face, the decision conflicts with *Udall* v. *Tallman*, 380 U.S. 1 (1965). *Tallman* applied with special force the rule of respect for administrative construction of executive orders or statutes relating to public lands. The instant decision recognizes administrative construction, at least since 1929, the date of what it calls "the leading Interior Department decision." Yet it gives no respect to the ensuing 37 years of administrative construction. This is wrong.

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[1] There is now pending before this Court an appeal by the claimant from a decision refusing to overturn the rejection of an attempted location of stone. *McClarty* v. *Udall*, No. —.

B. The decision is contrary to *Ivanhoe Irrig. Dist.* v. *McCracken,* 357 U.S. 275, 293 (1958). The 1955 Act in the instant case was premised upon the then-existing administrative construction, which was thoroughly explained to Congress, and was therefore ratified by it. Cf. *Boesche* v. *Udall,* 373 U.S. 472, 483 (1963).

IV

This Court's conclusion that the term "stone" in section 611 does not include "building stone" is contrary to clearly shown congressional intent.

The 1955 Act originated as H.R. 5891, 84th Cong., 1st sess. A companion bill was S. 1713, 84th Cong., 1st sess. Section 3 of both bills was identical and was enacted without change. In reporting S. 1713, the Senate Committee on Interior and Insular Affairs stated that to achieve its objectives, the bill would (S. Rept. No. 554):

> (1) Provide that deposits of common varieties of sand, *building stone,* gravel * * * shall be disposed of under the Materials Act of 1947 (61 Stat. 681), rather than under the mining law of 1872 [emphasis added].

See also 101 Cong. Rec. 9334 and 8743 (1955), and Hearings on S. 1713 before the Senate Committee on Interior and Insular Affairs, 84th Cong., 1st sess. (1955) pp. 40, 95–96, 103.

The Supreme Court, in *Blanset* v. *Cardin,* 256 U.S. 319, 326 (1921), stated: "And there can be no doubt that the Act was the suggestion of the Interior Department, and its construction is an assistant, if not demonstrative criterion, of the meaning and purpose of the Act (citations omitted)." The present decision ignores the clear intent of Congress and is therefore plainly wrong.

V

The decision's conclusions as to the effect of the Administrative Procedure Act are plainly wrong

A. The opinion states that a counterclaim is a permissible method of obtaining a judicial review under the standards of the Administrative Procedure Act and cites as authority *Adams* v. *United States,* 318 F. 2d 861 (C.A. 9, 1963). That case does not stand for that proposition. In fact, if anything, it holds to the contrary (pp. 866–867) and, except for *Adams,* we know of no support for the novel theory that a statute designed to govern, *inter alia,* judicial review proceedings can be invoked defensively to justify a trespass on the public domain.

B. The decision's conclusion that the Administrative Procedure Act has negated the limited judicial review provision of Interior decisions as stated in *Cameron* v. *United States,* 252 U.S. 450 (1920), and *Standard Oil Co. of California* v. *United States,* 107 F. 2d 402, 410 (C.A. 9, 1940), ignores recent Supreme Court decisions. In *Boesche* v. *Udall,* 373 U.S. 472 (1963); *Udall* v. *Tallman,* 380 U.S. 1 (1965); and *Best* v. *Humboldt Mining Co.,* 371 U.S. 334 (1963), the Supreme Court has clearly again held that decisions of the Secretary of the Interior are not to be treated in the same manner as cases arising from the typical regulatory type agency proceeding and has gone out of its way to reaffirm *Cameron.* The decision misstates the *Best* case.

The Administrative Procedure Act does not give this Court jurisdiction to review the decision of the Secretary of the Interior.

Adams v. *Witmer,* 271 F. 2d 29 (C.A. 9, 1959), insofar as it may be read as holding that the Administrative Procedure Act confers jurisdiction on courts, is wrong. The Administrative Procedure Act does not give the court jurisdiction. *Blackmar* v. *Guerre,* 342 U.S. 512, 515–516 (1952); *Chournos* v. *United States,* 335 F. 2d 918 (C.A. 10, 1964). Prior to the enactment of 28 U.S.C., sec. 1391, 2(e), only the courts of the District of Columbia had jurisdiction to review a decision of the Secretary of the Interior, and Section 1391 does not grant a review free of mandamus limitations. The decision would usurp the function of Congress to declare on what basis, if at all, the courts may interfere with adjudications concerning federal property.

VII

This Court's decision clearly is in direct conflict with *Foster* v. *Seaton*

Foster v. *Seaton,* 271 F. 2d 836 (C.A. D.C. 1959), does not stand for the proposition stated by this Court. The requirement of present marketability is not an additional requirement added to the mining laws, but rather is a necessary element in determining whether a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. In following this standard the existence of a present market is an essential element as is the cost of extraction.

Strangely, while purporting to distinguish *Foster* earlier, the decision lists the departmental decision in *Foster* as one of those it rejects, citing "aff'd *Foster* v. *Seaton,* 271 F. 2d 836 (1959)." The United States District Court for the District of Nevada has said that this Court's decision "struck down the 'present marketability' test of *Layman* v. *Ellis* and *Foster* v. *Seaton*" and remanded 36 mining claims to the Department for further consideration. *Dredge Corporation* v. *Palmer,* August 8, 1966.

VIII

The decision misstates *Adams* v. *United States,* 318 F. 2d 861 (C.A. 9, 1963)

The decision states (pp. 1–2):

> We think it settled, at least in this Circuit, that although the Administrative Procedure Act does not permit a trial *de novo* of administrative decisions, *Noren* v. *Beck,* 199 F. Supp. 708 (D.C. S.D. Cal. 1961); *Adams* v. *United States,* 318 F. 2d 861 (9 CCA 1963), it does authorize and require judicial review under the standards of the Administrative Procedure Act, *Adams* v. *Witmer,* 271 F. 2d 29 (9 CCA 1959), *Denison* v. *Udall,* 248 F. Supp. 942 (D.C. Ariz. 1965), and that a counterclaim is a permissible method of obtaining such review. *Adams* v. *United States,* supra.

Adams was a suit brought by the United States and, hence, could not so hold.

CONCLUSION

It is respectfully submitted that this petition for rehearing should be granted.

Respectfully,

Edwin L. Weisl, Jr., Assistant Attorney General. Manuel L. Real, United States Attorney, Los Angeles, California, 90012. Ernestine Tolin, Assistant United States Attorney, Los Angeles, California, 90012. Roger P. Marquis, George R. Hyde, Attorneys, Department of Justice, Washington, D.C. 20530.

August 1966.

CERTIFICATE

I certify that this Petition for Rehearing is filed in good faith and not for purposes of delay.

George R. Hyde, Attorney, Department of Justice, Washington, D.C., 20530.

On Petition for Rehearing—Filed January 3, 1967

Before: Chambers and Jertberg, Circuit Judges, and Thompson, District Judge.

Per Curiam:

The arguments made by the United States of America, Appellee, in its petition for rehearing, imply that the Secretary of Interior is a necessary counterclaim defendant in this action. We believe the ends of justice will be served by inviting the Secretary to move this Court to be joined as a party (Cf. Mulloney v Anderson 1952, 342 U.S. 415). If the invitation is accepted the Secretary will be accorded time to file a brief on the merits and to present oral arguments.

Accordingly, it is ordered that Stewart L. Udall, Secretary of the Interior be, and he hereby is, granted thirty days from date in which to move this Court to be joined as a counterclaim defendant and appellee in this action, if he is so advised.

Richard H. Chambers, United States Circuit Judge.
Gilbert H. Jertberg, United States Circuit Judge.
Bruce R. Thompson, United States District Judge.

90-1-10-579

MOTION FOR JOINDER OF SECRETARY OF THE INTERIOR AS A PARTY—Filed January 27, 1967

WHEREAS this Court, by its order dated January 3, 1967, has granted Stewart L. Udall, Secretary of the Interior, 30 days in which to move this Court to be joined as a counterclaim defendant and appellee in this action; and

WHEREAS this Court has stated that the Secretary of the Interior will be accorded time to file a brief on the merits and to present oral arguments if the Secretary of the Interior elects to move this Court to join him as a counterclaim defendant and appellee; and

WHEREAS the Secretary of the Interior, since the passage of the Act of October 5, 1962, Pub. L. No. 87-748, sec. 1(a), 76 Stat. 744, 28 U.S.C. sec. 1361, has been subject to the jurisdiction of district courts throughout the United States in actions in the nature of mandamus; and

WHEREAS this Court, as was done in the case of *Mullaney v. Anderson,* 342 U.S. 415, 417 (1952), has, in the interest of effective judicial administration, the power to authorize joinder of the Secretary of the Interior as a party, which could have been done in the district court on motion of the appellants; and

WHEREAS the district court could have entertained this action by virtue of the venue provisions of the Act of October 5, 1962, Pub. L. No. 87-748, sec. 2, 76 Stat. 744, 28 U.S.C. sec. 1391(e).

NOW THEREFORE, Stewart L. Udall, Secretary of the Interior, moves this Court that he be joined as a party to this action as a counterclaim defendant and appellee under the above authority, which is the only basis on which the Secretary of the Interior can be made a party to an action.

Respectfully submitted, Edwin L. Weisl, Jr., Assistant Attorney General. Roger P. Marquis, George R. Hyde, Attorneys, Department of Justice, Washington, D. C., 20530. Counsel for Stewart L. Udall, Secretary of the Interior.

January 25th, 1967.

ORDER ON MOTION FOR JOINDER OF SECRETARY OF THE INTERIOR AS A PARTY—Filed February 8, 1967

Before: CHAMBERS and JERTBERG, Circuit Judges, and THOMPSON, District Judge.

Responsive to the Order entered January 3, 1967, Stewart L. Udall, Secretary of the Interior, did, on January 27, 1967, move this Court to be joined as a counterclaim defendant and appellee in this action. Accordingly,

IT IS ORDERED that Stewart L. Udall, Secretary of the Interior, is hereby joined as a party to the action entitled above as a counterclaim defendant and appellee. A rehearing is granted. Appellees shall have thirty days from date in which to serve and file a supplemental brief on appeal. Appellants shall have thirty days thereafter to file an answering brief. The briefs may incorporate by reference any briefs and motions or petitions citing points and authorities which are now on file. Thereupon the case shall be set for oral argument.

Richard H. Chambers, Circuit Judge. Gilbert H. Jertberg, Circuit Judge. Bruce R. Thompson, District Judge.

90-1-10-579

ORDER ON REHEARING

Following this Court's opinion and decision filed June 21, 1966 (*Coleman* v. *United States,* 9th Cir. 1966, 363 F. 2d 190), the United States petitioned for a rehearing. The Court then entered an order inviting Stewart L. Udall, Secretary of the Interior, to move to join as a counterclaim defendant and appellee (See *Mulloney* v. *Anderson,* 1952, 342 U.S. 415). Such a motion was made, and an order was entered joining Stewart L. Udall, Secretary of the Interior, as a counterclaim defendant and appellee, and a rehearing was granted. Briefs were filed and oral argument entertained on June 15, 1967.

After thorough reconsideration of the issues involved and the arguments of the opposing parties, the Court adheres to and confirms the opinion and decision filed June 21, 1966.

s/Richard H. Chambers, Circuit Judge. s/Gilbert H. Jertberg, Circuit Judge. s/Bruce R. Thompson, District Judge.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1967
No. 630

UNITED STATES et al., Petitioners,
v.
ALFRED E. COLEMAN, et al.

ORDER ALLOWING CERTIORARI—Filed December 4, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Marshall took no part in the consideration or decision of this petition.

UNITED STATES DEPARTMENT OF THE INTERIOR

Bureau of Land Management
Land Office
Los Angeles, California

Contest No. 6833

(MA 0137951 L.A.)

Involving: Baldwin Lake Quarry Claims
Nos. 1 and 4 through 20, Incl.

UNITED STATES OF AMERICA, Contestant

vs.

ALFRED AND EDNA W. COLEMAN, Contestees.

COMPLAINT

In accordance with Title 43 Code of Federal Regulations, Part 221, the United States of America, acting by and through the Manager, Land Office, Los Angeles, California, Bureau of Land Management, Department of the Interior, pursuant to an official request of the Regional Forester, Forest Service, Department of Agriculture, California Region, brings this contest against the contestees named above, and for cause of action alleges:

I

The lands hereinafter described are public lands of the United States, withdrawn as a part of the San Bernardino National Forest.

II

The contestant is informed and believes that the above-named contestees are the owners, or assert the ownership, of the above-named unpatented mining claims. The contestant is also informed and believes that the contestees' address is: Mr. and Mrs. Alfred Coleman, P.O. Box 322, Big Bear City, California.

III

Said mining claims are situate in San Bernardino County, State of California, and as nearly as they can be identified, are embraced within Sections 1, 2, and 12 in T.2 N., R.1 E., and Sections 6 and 7 in T.2 N., R.2 E., S.B.B.&M.

IV

So far as is known to contestant, there are no proceedings pending for the acquisition of title to, or an interest in, the above-described lands, except patent application M.A. 0137951 L.A.

Contestant charges separately and collectively that:

(a) The lands embraced within the claims are non-mineral in character.

(b) Minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery.

(c) $500.00 has not been expended on Baldwin Lake Quarry Claims Nos. 7, 9, 11 to 19, inclusive.

WHEREFORE Contestant requests that it be allowed to prove its allegations and that the said mining claims, and each of them, be invalidated.

NOTICE

This complaint is filed in the Los Angeles Land Office, Bureau of Land Management, 215 W. 7th Street, Los Angeles 14, California, and any papers pertaining thereto shall be sent to such office for service on the contestant.

Unless contestees file an answer to the complaint in such office within thirty days after service of this notice, the allegations of the complaint will be taken as confessed.

Dated: March 5, 1958.

Paul B. Witmer, Manager.

Certified Mail

P.O. Box 322
Big Bear City, California
March — , 1958.

M.A. L.A. 0137951
Contest 6833
M:PFM: agd
4.1

United States Department of Interior
Mr. Paul B. Witmer
Land Office
215 W. 7th St.,
Los Angeles 14, Calif.

Answer to complaint of March 5th involving: Baldwin Lake Quarry claims Nos. 7, 9, 11 to 19 inclusive.

I

a. To the best of our knowledge the contestees believed after careful investigation of all available maps and publications and careful inquiry at the local Ranger Station in Big Bear Lake District, and at the San Bernardino County office of the U. S. Forest Service in San Bernardino, that lands embraced by the claims in this contest were open to mineral location at the time the claims were established and recorded.

b. That the claims were established with the knowledge of and not in any way disputed by the personnel in charge at that time of the part of the San Bernardino National Forest in which the claims were located.

c. For our authority to establish these claims, we refer to and quote from State of California, Department of Natural Resources—Legal Guide to Prospectors and Miners; Division of Mines, Ferry Building, San Francisco; prepared as a supplement to Mineral Information Service Volume 5 No. 7, published October, 1952. Page 8.

> "Good Faith—Good faith as an element in initiating of mining rights under Federal and State Laws, is absolutely essential to the validity of such rights and may

not be dispensed with; lack of it vitiates any attempt to initiate such rights,'' All that we did was done in absolute good faith.

> ''Lands open to Location (Sec. 2319 Revised Statues of U.S.) ''All valuable mineral deposits in land belonging to the United States, both surveyed and unsurveyed, and the lands in which they are found, are free and open to *exploration, occupation and purchase,* except that aliens may not obtain patent. This includes mineral land within the national forest.''

The other part of paragraph ''Lands'' same page 8 afore mentioned publication, that clearly applies to the claims named in this contest states:

> ''Land valuable for its mineral deposits is land which contains minerals in sufficient quantities to justify exploitation and development. The mineral deposits may be metaliferous such as gold, silver, and other metals or *non-metaliferous* such as alum, amber, *building stone,* diamonds, gypsum and like substances.''

Also on page 9 of the same legal guide—headed Mining Claims within National Forest—

> ''Generally speaking, vacant United States land within the boundaries of National Forests, is open to location and entry for mining purposes under the general mining laws, subject to jurisdiction of the United States Forest Service.''

It was the above paragraph that caused me to inquire as to the status of the lands now being contested, before I even started to locate the claims, and at the time I made inquiry the answers given by the men in charge, encouraged further effort to establish a quarry.

We also examined previous publications on mining laws by both the State of California and the United States Department of the Interior, the last being Lode and Placer Mining regulations part 185, Title 43 as amended and including No. 1, 1940 U.S. printing office 1947, and,

Manner of Locating and Holding mineral claims in California by A. H. Ricketts; Revised by C. A. Logan. Reprint from California Journal of Mines and Geology Volume 44, No. 1 January 1948.

We also went to the County Library and read the law as printed in American Mining Law Volume II by Ricketts and no where were we given evidence nor did we find evidence that we were committing any trespass, or breaking any law or guilty of any wrong doing. The claims were filed starting February, 1949 and a constant check has been maintained by us from that date to the present time to ascertain that we had obeyed any new mining laws as well as all of the older ones in existence.

II

The contestees, Alfred and Edna W. Coleman do assert their ownership by co-locating of the above named unpatented mining claims. The address of the contestees is P.O. Box 322, Big Bear City, California.

III

Said mining claims are situated in San Bernardino County, State of California, and as nearly as can be ascertained by careful surveys made personally by Alfred Coleman can be identified and are embraced by and within Sections 1, 2 and 12 in T. 2N, R 1E; and sections 6 and 7 in T. 2N, R. 2E., S.B.B. & M.

The above survey data by Alfred Coleman was submitted with maps and records for examination to Mr. Sanborn the U.S. Forest Service mineral examiner and after carefully checking and copying by Mr. Sanborn he was satisfied that all data and locations in the patent application were reasonably accurate as to location of the claims in conformity to public surveys and by legal subdivision.

IV

So far as is known to the contestees, Alfred and Edna W. Coleman, there are no proceedings pending for the acquisition of title to, or an interest in the above described lands, except patent application M.A. 0137951 L.A. Contest No. 6833 which is being answered herewith.

V

a. The contestees assert the proven facts are as evidenced by Special Report No. 31 Geology of the Johnston Grade area, California Bureau of Mines by Robert Guillon, State Geologist; on page 1—"The deposit of Saragosa Quartzite is well illustrated and clearly described as the topmost mineral overlaying the area described.

The fact that it is not claimed for its other possible mineral content, metalliferous and nonmetalliferous, bears no significance to the value of the quartzite itself. It is one of the finest building stones available in Southern California and as such comes under Building Stone classification. It also comes under the classification of nonmetalliferous commercial minerals for probably *more possible industrial uses* than any other building stone or single commercial mineral that is available. By this the contestees assert a long list of industrial uses can be made of the quartzite when crushed, classified and in some cases purified.

The site of the deposit is also ideal for a long term permanent operation; the resource of material in the deposit covers practically every square foot of the claims in question. The site and terrain have the advantages of gravity from the claims to State Highway—fairly level through the claims, and power line paralleling Highway and also natural water supply upon the group of claims. Copies of the above report No. 31 were furnished as part of the Patent Application.

The material, saragosa quartzite, has been accepted and officially approved for building for all structural purposes, according to City and County of Los Angeles and County of San Bernardino building codes, and by Safety and Planning Commission after certified tests by Smith Emory Company of Los Angeles. Smith Emory are industrial chemists.

b. The contestees quote again from Legal Guide to Prospectors page 9

> "Discovery—This term has a technical meaning in mining. It may be defined as knowledge of precious metals (or other valuable mineral) within the lines of the location or in such proximity thereto as to justify a reasonable belief in their existence."

> "The discovery should be, but not necessarily, of present commercial value; be situated within free territory and within the boundaries of the location, and may be underneath or upon the surface of the ground. The discovery is sufficient if it justifies a person of ordinary prudence in making expenditure of labor and material with reasonable prospect of success in developing a paying mine."
>
> "A discovery can be bisected by a side or an end line to constitute discovery in two independent locations."
>
> "a placer deposit covers all other types of mineral deposits, including building stone."

The contestees assert that according to Plate 1 contained in special Report No. 31, made as part of Patent Application, that the deposit of mineral quartzite is described as upwards of one thousand feet thick and covers over a square mile in surface area so that the presence of a very large and permanent supply now available is no exaggeration.

c. Reference Federal Statues on Mining Locations. Title XXXII Chapter VI, Revised statutes of the United States, Sec. 2319:

> "All valuable mineral deposits in lands belonging to the United States, *both surveyed and unsurveyed,* are hereby declared Free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States."

Contestees assert that they did occupy claims Nos. 7, 9, 11 to 19 inclusive as part of the whole group of contigous claims Nos. 1 and 4 through 20 inclusive for the purpose of establishing a permanent quartzite quarry and that much more than $500.00 was expended for the benefit of each and every claim in the group or more than a total of $9,000.00 for the group of 18 claims. The total expenditure was made within both the requirements of the law and within the most important development needs of a permanent quarry.

Again quoting from State of California Legal Guide to Prospectors, page 26, note carefully:

> "ANNUAL EXPENDITURE AND ASSESSMENT WORK—Within *withdrawn areas* neither assessment work nor

> patent is necessary to preserve possessory right of the claimant, and he holds the claim in perpetuity unless he loses his rights by abandonment."

If this be so we need not have made any expenditure on any of the claims as the contestant claims in his complaint, as the "*land is withdrawn.*" This would void any deterent effect to the Patent Application because of lack of sufficient expenditure on any specific claim within the withdrawn area.

Quoting again from same paragraph on ANNUAL EXPENDITURE, page 26,

> "*Labor may be done or improvements made upon or at a distance of from anyone of the locations comprising a group of claims, when of benefit and value to the entire group.* The test of sufficiency is whether the expenditure tends to facilitate the development or actually promotes or tends to promote the extraction of mineral."

> "Any building, *roadway,* or other improvements used in connection with an essential to the practical development of the claim will enter into and form a part of the expenditure for improvements."

> "Any work done for the purpose of discovering minerals is improvements."

> "Assessment work may be done on or off the claim itself, if of benefit or value to it."

so therefore, the contestees assert that there was no immediate requirement by law for them to spend $500.00 on each and every individual claim of the group regardless of whether the lands in question were or were not withdrawn. But more than $100.00 per year per claim was actually put into development for the whole group of claims. The contestees fully understand that $500.00 per claim, or $100.00 per year for five years, would mean a total expenditure on claims of $9,000.00 to make the claims eligible for Patent. We, the contestees, therefore undertook to do the necessary location and assessment work as improvements by the steps and labor and expenditures as described as follows:

1. A building had to be set up to live in. A miner is just as entitled to a place to live in as a homesteader, and living on the site of operation cuts down travel time and expense, and allows more time for development of the premises. The cost of building and the time saved, both tend toward development.

2. Although the law states clearly (Sec. 2303—Manner of locating, marking and describing placer claims) that "where the United States survey has been extended over the land embraced by the location, however, the land may be taken by legal subdivisions and no other reference than those of such survey shall be required, and that a claim so located need not be staked or monumented. The description by legal subdivision shall be claimed the equivalent of marking." We claimed the land by legal subdivision.

In this group of claims the terrain was so rough and so overgrown, that some kind of a survey was very essential to determine what subdivision the deposits of quartzite were actually in, so that work could be done within the boundaries of the claims, therefore, we bought a good transit and other surveying equipment and went to work not for hours, but actually well over a months time to determine with fair accuracy where the boundaries lay on that mountainous terrain, and then for another month or so surveyed to determine the future course of access roads up the mountain to the top of the deposit—for the purpose of both location work and to properly develop the quarry from the top down by benching off the deposit, and thus avoiding any future hazard of overhang, cave-in, or rock slide. There was no point in tunneling into this deposit on top of the mountain; the need was to make good access roads for equipment to quarry faces to be opened from the top down.

Any conservative estimate of the value of more than two months work surveying will run up a sizeable bill directly chargeable as exploration work to the whole group of claims.

3. Next came the job of actually building access roads up the mountain to the deposits where no roads had ever been. Evidence of lack of roads is shown in Aerial Photo No. AXL 16-F-126 taken by Western Laboratories June of 1949—about four and a half months after I filed on the first claims in February, 1949. There were no roads, not even sufficient to fight fire and this mountain has once been burned over.

When Mr. Sanborn, the U.S. Forest Service Mineral Examiner drove up and down three and a half miles of well graded road on this mountain, to points on all claims except claims 14, 17, 18 and 19—he could not possibly evaluate the difference between the completed road and what it had cost in time, material and labor to do the job. He never saw the conditions at the start. Suffice to say no government agency, or any private individual thought it worth the long and expensive effort required—until I personally explored and evaluated this quartzite deposit.

Against this job can be charged every minute of my time other than that which was essential for other work—probably averaging four hours a day for about eight years, six days a week; one new tractor completely worn out in the operation and its replacement partly worn out, plus two unlicensed trucks working on the property, plus thousands of gallons of gasoline and oil burned in building the road, plus some casual labor hired when it could be had and used to advantage, plus ten cases of dynamite, detonator and hundreds of electric caps, plus many worn out tools, plus a worn.out car used on the place for transportation, plus many tool replacements and blacksmith work and welding, plus loading and blasting time, plus manhandling alone thousands of ton to rock.

To bear out this statement I am going to present for examination at the hearing, Aerial photo of the place and many photos taken of initial work to illustrate the real work and actual cost. Estimates that someone arrives at without knowing the facts are very unfair as to total expenditure and as to expenditure on individual claims.

Furthermore, last year a fire insurance policy for $8,000.00 was issued on the buildings by a very reliable company that only insures a percentage of the real value of improvements, and since that issue at least $3,000.00 more improvements have been added to the claims.

Water has been developed, electric power installed; propane gas installed; septic tank installed. Heating installed for the purpose.of further promoting the efficient operation of the enterprise which is our sole livlihood, and income, and business and residence.

Original location work at $1.00 per acre per claim (Sec. 2304 and 2305) discovery work on mining claims, consisted of exploration, surveying and open cut work to working faces.

Assessment work consisted of access roads up the mountain and to working faces and bench levels and mechanical work necessary for production and development of water, sanitation, *shop space,* etc., etc. No man would undertake to reproduce what is visible today on the property in labor and material equity for less than $20,000.00. This whole enterprise accomplished at risk of life and limb. The desire is to clear title to the labor and material equity in and on the land so that the whole enterprise will become usable collateral for expansion; the potentiality exists because of the natural resource, plus our *development* work and marketing efforts. We have equity of labor and material built up through the years by hard hand labor and self denial, and we are entitled to a clear title to the claims and to our equity.

A large corporation could not have developed this enterprise to its present value much cheaper than we did. The only difference in the expenditures would be that a corporation would lay out a lot of cash and man hours over a shorter period of time. I laid out know how and man hours over a longer period of time, with less cash. The value of development is all there just the same.

The quarrying operation on this deposit cannot be economically conducted from the bottom of the deposit up—it has to be from the top down to be efficient and economical and all location and development work was planned with the knowledge that to dig under the deposit or in to the side of it, would only produce hazard and waste in the long run. All past attempts to commercialize this deposit failed, because of too much cost and impractical quarry operations. No one ever ventured the necessary effort to do a correct and permanent job of quarrying here until I undertook the job and paid the costs. There are no unpaid bills.

To try to short cut under real necessary expense spelled failure and necessary expense was far and above that required to be shown for Patent Application. We have not failed. "If the test of sufficiency is what it is worth", we have paid what it is worth. We have expended more than enough by any reasonable measurement to justify the claims.

Furthermore, we again assert that the only practical way to carry on permanent development of this quarry is to work from the top down to avoid waste and hazard and to do this it is absolutely necessary to have access to the top and ample working space to properly grade roads down to the highway level to transport equipment and material on the claims, and to classify and stock pile products. The access road as now laid out and completed might well have to be rerouted for any kind of efficient operation if any of the claims of the group were invalidated. Since the rise to the mountain top is well over 1,000 ft. from the highway level thru the deposit, if claims were worked one at a time from the bottom up, there would be *so much road work* even to move equipment on the claims because of the sharp rise of the ground, that there would be less than half of the space available for quarrying and it would be impossible to quarry for half the available depth of material, without creating high over hang from adjacent claims with resulting hazard from earthquake or rock slides loosened by blasting.

Since the deposit is above ground, by going to the top and far back on the claims contained all in one group, quarrying can then be carried on to the maximum depth of material of value without waste or hazard. To invalidate any of the claims will do serious damage to all of the group. It is both impractical and unjust to invalidate any of the claims.

There are clear examples all around the base of the mountain of the ildirected efforts of people trying to *freeload off the public domain without any intention of ever making any improvement or doing any real development work.* The results of their efforts can be seen in thousands of tons of wasted and neglected material and ugly rubble.

We have set an example of diligence and far reaching planning that can result in permanent good in the development of this natural resource, and be a guide post for other similar developments. This deserves recognition by the people who administer public property but who never even spent enough on this site to make access to fight forest fires, and never policed it efficiently enough to prevent it from being an unauthorized dump for the nearby communities. We cleaned up this trash and prevented repetition of such practice by installation of four gates at the point of access from the highway. This also is improvement. The spring developed as a water source is heavily fenced with rock to prevent cattle damage, leaving ample overflow for drinking.

If the protest was entered by the Forest Service as routine to exhaust all possibilities of fraud or misrepresentation, then our title to the claims should be clear and without cloud after this answer to the protest has been evaluated by the hearings officer.

We shall be glad to answer to the best of our ability any other questions in regard to the claims. The common practice of location work and development work such as shafts and tunnels were not in the best interest of improvement or development of this quartzite deposit here.

Here we have a case of large amounts of material pushed up by the forces of nature from deep in the earth to form a mountain top.—defined geologically as a thrust. This thrust of quartzite was so hard that over burden eroded from above and around it, leaving the deposit on top of the mountain and spilling down the sides of the mountain. There is no over burden that needs exploring by digging. What was needed was proper location for establishing the boundaries of the claims, and access roads to quarry the material and bring it off the top and side of the mountain.

The roads and quarry faces are *open cuts.* A pretty clear idea of material already blasted and moved can be obtained from pictures I shall bring to the hearing. I do not have the negatives for these pictures so cannot furnish copies. Thousands of yards of material have been moved in clearing the way for access. Many cords of pinion, juniper and ironwood had to be cleared to eliminate fire hazard and to clear road bed. All this definitely represents improvement. The mineral examiner could see none of this work in driving over a completed road.

Besides all the surface material handled in this development work, the whole mountainside consisting of about 80% rock and 20% humus and fines mixed with it so compacted by natural action that buried masses all along the road bed has to be blasted one by one, and then the material cracked up by sledge, wedge and bar, tossed out by hand. Then in a year's time, nature reseeded the road surface so that very little of this effort is visible. The material taken out was used three ways: rubble for shoulder of the road; fills where there were washouts, and broken material to refill blast holes, *so that material is not now very visible.* This task alone was almost a labor of Hercules—the buried rock masses were frequently large enough so that a bulldozer would be useless, the terrain so rough that the traction was unsafe for a tractor—nothing but long patient man hours of labor and dynamite could open the way. That's how it was done.

No good can come of any short sighted or ill advised effort to expropriate the claimants of the land in question after more than nine years of honest, diligent, sincere effort in sound development work, and a large cash expenditure for machinery, building, etc., far in excess of that required by law. There is not, and never was, any fraud contemplated in this enterprise. The foregoing lengthy answer to questioning our total expenditure of effort in development was, we believe, made necessary by the fact that the claims are not for the *usual buried mineral deposit,* but for a bare inaccessible mountain top deposit requiring special understanding and a special kind of development. I am past sixty-one years of age and have more than forty-five years of mechanical and construction experience, besides experience and license as Chief Engineer in the U.S. Merchant Marine. During the past nine years practically my entire efforts have been devoted to Baldwin Lake Quarry claims, and it now is our sole source of income.

To invalidate these claims means expropriating almost ten years of life and labor and self denial on the part of two citizens, who have pioneered in the true American fashion. It means wrecking the only security they have been able to build for their independence and retirement by their own hard labor and resources. During all this effort I have not drawn in any way upon public funds, or public aid for any support.

We sincerely hope that the patient effort put into the enterprise and into this answer, will receive proper recognition. We do not believe we should in any way be penalized by technicalities or extreme burdens of proof because of frauds and misrepresentation perpetrated by many dishonest people, that have now made the laws so strict that the burden of proof is almost beyond endurance for an honest man and often unjustly kills private enterprise because of fear of too much red tape. Our effort at clearing this title started well over *two years ago* in January, 1956, and it has been a long struggle to get final action from then on.

The fact that hundreds of tons of this quartzite are now in use as retaining walls, guard rails, steps, drinking fountains, etc., by State Highway Department, County Road Department, United States Forest Service on various installations is additional evidence that the material has value for building purposes, long since recognized.

We do not wish to be classed with irresponsible free loaders who merely try to get some easy pickings off public domain. These people, and the government agencies listed above have all gone to rock slides adjacent to the highway and hand loaded material from off the surface until *this small but ready source* was depleted to a point where it became impractical to come back for more until some real development work was planned.

We request that the hearing of contest No. 6833 be held as soon as possible to relieve the contestees of the long drawn out burden of proof required by the several government agencies that must render decisions.

Yours truly, Alfred Coleman, Edna W. Coleman.

AC/ec

[Tr. 1–2] Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock a.m.

Before: John A. Wood, Hearing Officer.

Appearances:

Charles Lawrence, Esq., Room 212, Federal Office Building, San Francisco, California, appearing on behalf of the United States Department of Agriculture.

Mr. and Mrs. Alfred Coleman, Post Office Box 322, Big Bear City, California, appearing on their own behalf as Contestees.

[Tr. 3] PROCEEDINGS

Hearing Officer Wood: This is the time and place designated for the purpose of receiving oral testimony under oath and documentary evidence bearing upon any and all matters pertaining to the issues in Contest No. 6833, entitled United States of America vs. Alfred and Edna W. Coleman, involving the Baldwin Lake Quarry Claims embraced within Sections 1, 2 and 12, Township 2 North, Range 1 East, and Sections 6 and 7, Township 2 North, Range 2 East, S.B.M., California, upon which the Government charges: 1, that the land embraced within the claims are non-mineral in character; 2, minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery; 3, $500.00 has not been expended on Baldwin Lake Quarry Claims Nos. 7 and 9 and 11 to 19, inclusive.

The burden of proof rests upon the Government to establish a prima facie case, and thereupon it is incumbent upon contestees to refute the charges by a preponderance of evidence.

Let the record show that there appears for the Government Mr. Lawrence, and that Mr. Coleman and Mrs. Coleman appear on their own behalf.

Mr. Lawrence, do you have any opening statement you would like to make?

Mr. Lawrence: I have no statement, Mr. Examiner.

[Tr. 4] Hearing Officer Wood: Mr. Coleman, do you have any opening statement you would like to make? It is merely a formality, that you might merely state what you intend to prove, or you may keep silent and let the Government proceed on their case.

Mr. Coleman: I might state just this, that the Government, we the people ask all of us to defend the liberties and the rights we have here, we are trying to enjoy, and in so doing I went through two wars, and then after the war was over I found myself out of a job. I either had to create one for myself or take something mediocre where I couldn't use any of the abilities I had acquired over a long lifetime. So I decided to try to tap natural resources somewhere. I have had a long background of mechanical and mining experience, including work for Ingersoll, the largest company of its kind in the world. So I have a rather clear vision of values and labor involved in producing value from the ground. The ground is dormant until somebody does something to it.

Hearing Officer Wood: You may offer such proof, Mr. Coleman, after the Government establishes their case.

I might state for your benefit that the Government appears to be only too happy to allow anyone to remove any minerals from the ground, and that is the purpose of the mining laws, should there be established here today a valid and subsisting claim upon which there are sufficient minerals. [Tr. 5] I am sure the Government will be glad to let you proceed.

Mr. Coleman: Do you wish me to answer that question about sufficient minerals now?

Hearing Officer Wood: No. You may wait until the Government establishes their case and then come in with whatever evidence you may have at the present time.

Are you ready to proceed?

Mr. Lawrence: Yes. I will call Mr. Sanborn on behalf of the Government.

WILLIAM C. SANBORN, having been duly sworn, testified as follows:

Direct examination.

By Mr. Lawrence:

Q. State your full name for the record, please.

A. William C. Sanborn.

Q. What is your present occupation, Mr. Sanborn?

A. I am a mining engineer in the employe of the U. S. Forest Service, Department of Agriculture.

Q. Will you briefly outline your educational background and experience, so far as it relates to mining and examination of mineral values?

A. I graduated from the Michigan College of Mining and Technology in 1933 with a Bachelor of Science Degree in Mining Engineering.

From January, 1934 to July of 1935 I was employed by the [Tr. 6] Canyon Mines Corporation at the Rawhide Mine in Placer County, California.

The employment there was initially in the capacity of assayer and underground surveyor.

Subsequent to a period of employment I was placed in charging of milling operation, 50-ton rotation mill.

From July, 1935 until August, 1937 I was employed at the Heslap Mine in Del Norte County, California in the capacity of mining engineer and mill foreman.

From August, 1937 till February, 1942, I was employed by Arctic Circle Exploration, Incorporated, a dredging and hydraulic mining company, having their principal operations at Candle, Alaska.

My employment with the said firm was in the capacity of mining engineer, and the work included that of normal operating supervision and additionally the examination of mining prospects which were brought to the attention of the company.

From April, 1942 until September, 1945 I was employed by the United States Bureau of Mines, Department of Interior, in the capacity of Associate Mining Engineer in Montana and California.

In that particular employment my job was that of investigation of mining properties brought to the attention of the Department of Interior, and likewise to supervise exploration activities on claims and deposits which warranted expenditures of government monies.

[Tr. 7] From September, 1945 until the present, I have been employed by the Forest Service in the capacity of mining engineer, undertaking the examination of lands within the national forest which have been filed under the mining law. This work covered examinations in Washington, Oregon and California.

Q. Do you have occasion at any time to examine Baldwin Lake Quarry Claims Nos. 1 and 4 through 20, inclusive, of which the claimants are Mr. and Mrs. Coleman?

A. Yes, sir, I have.

Q. Would you state briefly what you did in this connection, and do you by any chance have a map of these claims?

A. Yes, sir, I do have a map, which depicts the claims as to the legal subdivisions involved, likewise, the land features.

Additionally, I have outlined the lands described in the various individual claims on the Lucerne topographic sheet of the Department of Interior, U. S. Geological Survey.

The reason for the last reference is to indicate the relief or the general topography involved within the limits of the claims, which is not indicated on the map, of considerable larger scale.

Q. In regard to the first map, what was the source of the information shown on it?

A. The information, or the map, I should say, was [Tr. 8] traced from a map which Mr. Coleman drew, in part, the base of which was an enlarged aerial photograph, and in part work which Mr. Coleman did on the ground in running outlines and making traverses from corners which he could identify upon the ground.

Q. Is this the map to which you refer, the document I show you?

A. Yes, sir. Now, additionally to the map which Mr. Coleman made, there may have been a few things noted thereon by myself.

For instance, in the center or approximate center of each claim, I have noted the month and year the claim location notice indicates the filings were made.

I think essentially the map is pretty much the same as Mr.—the map which was Mr. Coleman's, and which was drawn by him.

Mr. Lawrence: I shall offer in evidence the map which the witness has described.

Do you have any objection?

Mr. Coleman: I have the original right here. I have all of that. I don't question Mr. Sanborn's map. We might eventually check the dates on the claims, if there is any question; I have the original location notices here.

Hearing Officer Wood: There being no objection, it may be marked Contestant's Exhibit No. 1 and received in evidence.

[Tr. 9] (The document above referred to was marked for identification and received in evidence as Contestant's Exhibit No. 1.)

By Mr. Lawrence:

Q. The topography map you referred to, Mr. Sanborn, you have that in front of you?

A. Yes, sir, I do have.

Q. Is that based——

Mr. Coleman: I also have that.

Mr. Lawrence: Is there any objection to it?

Mr. Coleman: No. It is the same map. I have it in my setup here too.

Mr. Lawrence: I will offer this map in evidence as Exhibit 2.

Hearing Officer Wood: No objection, Mr. Coleman? Mr. Coleman, any objections?

Mr. Coleman: No.

Hearing Officer Wood: There being no objection, it may be received in evidence and marked Contestant's Exhibit No. 2.

(The document above referred to was marked for identification and received in evidence as Contestant's Exhibit No. 2.)

By Mr. Lawrence:

Q. You mentioned a third map?

A. Yes, sir, I have in my possession a third map, which [Tr. 10] actually is a map accompanying a State Division of Mines publication entitled "Geology of the Johnston Grade Area, San Bernardino County, California, Special Report No. 31."

Q. That report was mentioned or referred to and relied upon in the Contestee's Answer to the Complaint, was it not?

A. Yes, I believe that is true. The area covered by the report does not include all the land involved in the present application.

The portion, however, that is involved I have drawn upon the map of Mr. Guillou's, the subdivisions involved in the claims that the map does cover.

A few of the claims or portions thereof additionally extend beyond the area of the map that the geology shows upon.

However, the material depicted or the geology depicted on the claims which are shown is the same on the blank area which is beyond the order of that in which the geology is shown.

Mr. Lawrence: I should like to offer this map and the report of which that is a part as a composite exhibit.

Would there be any objection to that, Mr. Coleman?

Mr. Coleman: No, there is none. This is all part of the patent application. I have a duplicate of it right here.

Hearing Officer Wood: There being no objection, it may be received in evidence and marked Contestant's Exhibit No. 3.

[Tr. 11] (The document above referred to was marked for identification and received in evidence as Contestant's Exhibit No. 3.)

By Mr. Lawrence:

Q. Now, would you describe the results of the examination you made, also describe what you did in conducting this examination?

A. I undertook the examination of the claims involved in the instant application on October 7, 8, 9 and 10, 1957, and September 12, 14—September 11, 14 and 15, 1958.

Mr. Coleman accompanied me over the claims on the occasion of my examination in October, 1957 and pointed out the location monuments, the land corner which is common, section corner common to Sections 6 and 7, Township 2 North, Range 2 East, and 1 and 12, Township 2 North, Range 1 East, San Bernardino Base Meridian.

He likewise described the manner and method in which his map had been prepared and pointed out areas from which he had produced rock and had removed gravelly fraction.

The land involved comprises southeast trending broad top ridge, which extends from Gold Peak, which is the crest of the area immediately surrounding the claims, the height of which is shown to be 8,227 feet on the map.

Likewise, I believe the topographic sheet, Exhibit 2, corresponds, the elevation of Gold Mountains corresponds. [Tr. 12] The land involved has a relief of some 1100 feet and ranges in elevation from 6900 to around 8,000 feet.

The area as indicated by the reconnaisance and examination is made up of three distinct elements, namely, rock outcrops, being massive in nature, erosional material extending downslope from the rock outcrops, grading into fine fractions at the base of the ridge and slopes.

These particular fine fractions actually comprise portions of the bed of Baldwin Lake, Baldwin Lake being an intermittent lake which has no established drainage outlets and which water accumulates therein as being insufficient to develop a drainage system, and the water is removed by evaporation and seepage into the ground water table.

The quartzite rock, which is common clay throughout all the claims involved, is gray in color and thick bedded in its characteristics. It weathers out on the surface to pinks, and in areas that the original beds contain more iron, the oxidation of that causes the rock to become red on the outside surface.

There are a number of large talus slopes extending down from the ridge, two of which are involved within the limits of the claim, namely, in Claims No. 1 and 4 and in Claim No. 13 and 14.

There are larger talus slopes, more extensive, lying outside the limits of the claim to the north and to the west. [Tr. 13] The areas is an arid region in which it is normal for the forces of erosion to be that of primarily mechanical disintegration, rather than chemical weathering, and any mechanical disintegration that takes place, the fine fractions that are removed in this process are washed downslope from the rock outcrops, leaving rather porous, coarse accumulation of material on the uppermost portions of the talus cones.

However, as indicated by the work done on these talus cones, the material underneath the surface grades into soil fractions in which masses of angular quartzite rock predominates.

This is indicated in the road cuts of which I have taken pictures of.

Q. I believe these particular pictures depict what I was attempting to express in words.

The first one—I shall hand you this one first—shows the road cut, part way down the slope from the ridge. I believe that particular cut would be in Claim No. 4.

Q. Excuse me. You have a number of pictures here, do you not?

A. Yes, sir.

Mr. Lawrence: I would like to ask that they be marked for identification now so as to simplify things.

Hearing Officer Wood: Would you get them in the order in which you desire them to be marked?

[Tr. 14] (The documents above referred to were marked for identification and received in evidence as Contestant's Exhibits 4, 5, 6, 7, 8, 9, 10, 11 and 12.)

By Mr. Lawrence:

Q. All of the pictures which you have produced, Mr. Sanborn, you took yourself, did you not?

A. Yes, sir, I did.

Q. Now, would you then describe them in turn by reference to the exhibit number and indicate what they show?

A. Exhibit No. 4 was taken looking in a northeasterly direction and showing the long ridge which extends out from Gold Mountain, which I attempted to describe, the talus slope on the extreme left of the picture being identical to the talus slope shown on Exhibit No. 1 in the north half of the northwest quarter of Section 12, Township 2 North, Range 1 East.

The talus slope shown in the center of the picture is identical to that shown on Exhibit 1 in the west half of the northeast quarter of Section 12, Township 2 North, Range 1 East.

Exhibit No. 5 is a picture taken looking in a southwesterly direction from the north end of Baldwin Lake extension, and it shows the nature of the ridge on the other side of that shown in Exhibit No. 4, extending southeasterly from Gold

Mountain, Gold Mountain itself being to the right of the [Tr. 15] picture and not discernible in the particular photograph.

The talus slope shown in the right-hand side of the picture is identical to that depicted on Exhibit No. 1, as being in the west central part of Section 1, Township 2 North, Range 1 East.

Q. When were these pictures taken, Mr. Sanborn?

A. These pictures were taken in October, 1957.

I might say, additionally, that the talus slopes referred to in Exhibit 4, with the exception of a limb in the extreme easternmost part of the most easterly slope, lie outside the boundaries of the claims involved in the application.

As shown by Exhibit 1, it would appear that the talus slope which I referred to in Exhibit No. 5 lies partly within Claim Nos. 13 and 14.

Exhibit No. 6 shows the massive character of the quartzite beds which I endeavored to describe as comprising the rock outcrops lying within the limits of the claim.

This particular photograph was taken from roughly a point on the line common to Claim No. 9 and 12 in the northern portions thereof and looking in an easterly direction.

The picture shows the massive character of the erosion which is taking place within the limits of the claim, that of mechanical disintegration.

The rock shown are large in size, the relative nature of which can be somewhat determined from the man standing— [Tr. 16] by comparison with the man standing in the central part of the picture on a large rock, the individual being Mr. Nichols, District Ranger of the Big Bear Ranger District.

Exhibit No. 7 likewise shows the massive character of the rock outcrops, the same picture or said picture being taken looking in a northeasterly direction from the western part of Claim No. 6.

Actually the picture was taken from the road, which is shown by a dashed line crossing the claim in an easterly direction.

Again, the comparison of the rock masses can be obtained by considering Mr. Nichols again, who appears in the extreme right-hand side of the picture, can faintly be made out standing beside a very massive boulder of quartzite.

Exhibit No. 8 was taken looking in a northeasterly direction in the central part of Claim No. 5, and, as in the other pictures, the size relationship with Mr. Nichols can be obtained from comparing the rock masses with him.

I might say, likewise, that this picture is taken perhaps a third of the way down the slope of the ridge.

Mr. Coleman: Which claim?

The Witness: Claim No. 5, the central part of Claim No. 5.

A. (Continuing) Exhibit No. 9 was taken from the center of Claim No. 5 looking in a southeasterly direction [Tr. 17] downslope of the mountainside on to the bottom or bed of Baldwin Lake.

Exhibit No. 10 was taken farther downslope in Claim No. 4 and shows the accumulation of soil fractions intermingled with the fragmental quartz talus. This particular cut is on the road which traverses the claim.

Exhibit No. 11 was taken looking in a northwesterly direction and shows the talus slide on Claim No. 4 behind and adjacent to Mr. and Mrs. Coleman's residence. I might say at this point that the quartzite grades rather abruptly from relatively unoxidized material, comprising the surface fractions, which are colored from gray to buff to reds, pinks, within an interval of a few feet into rusty-colored quartzite masses, which in turn grade into very dark, almost black-stained fragments or masses of quartzite.

In other words, oxidation is a very changeable thing, and in vertical sequence.

Exhibit No. 12 was taken looking in a westerly direction from the highway, which is State Highway No. 18, which is depicted on Exhibit No. 1 as traversing the southernmost and easternmost claims.

This particular picture shows the nature of the material which is accumulated on the lowermost slopes of the ridge and shows rather clearly the nature of or the capacity or ability of water to move down the finely disintegrated [Tr. 18] fragments into the lowermost portions of the slope.

This picture was taken, as I mentioned, looking in a westerly direction, roughly from the vicinity of the section line dividing Section 12, Township 2 North, Range 1 East, and Section 7, 2 North, Range 2 East.

I think those pictures show more clearly what I was attempting to describe in words, the nature of the landscape involved.

I have, however, one additional picture which does comprise or does show an area of considerable size and rather unique character, which I think we should get introduced.

Q. Is this a picture which you took?

A. Yes, sir, I did.

Q. Also in October?

A. Yes, sir.

Mr. Lawrence: May this be marked next for identification?

(The document above referred to was marked for identification as Contestant's Exhibit No. 13.)

A. (Continuing) Certain of these pictures were taken by me in September of 1958. I can sort them out if you choose.

By Mr. Lawrence:

Q. Well, does the difference in date affect the significance of the pictures or the details in any way?

A. No, sir. I do not attach any——

[Tr. 19] Q. Did you describe Exhibit 13 completely?

A. Exhibit No. 13 shows a rocky meadow area, relatively gently sloping area in the—rather, on the ridge top, and involves Claims 7, 9 and 12. It is shown on Exhibit No. 1 by a light line drawn and having rather circular aspects, but very irregular fringes.

Therein, the material is angular quartzite masses intermingled with the fine product of disintegration being principally clays and small fragments of quartzite.

Mr. Lawrence: I will offer these pictures in evidence.

A. This picture was taken looking in an easterly direction down the long axis of the rocky meadow.

Mr. Lawrence: Is there any objection to these, Mr. Coleman?

Mr. Coleman: No. There isn't any objection.

I might state that in Mr. Sanborn's previous testimony in regard to the altitude of the terrain I have a letter from the people that furnished the aerial photograph, that survey in Washington, I wrote them about the highway and the roadside and gave them the number. They stated that the altitude was 6,724. Mr. Sanborn said from 6,900 up, but at the roadside it is 6,724, according to that letter; the top altitude going up is right.

But do they show an altitude at the roadside?

The Witness: They show the bed of Baldwin being [Tr. 20] about 6700.

Mr. Coleman: It is a couple hundred feet difference there——

The Witness: Which road is that?

Mr. Coleman: The State Highway right at the entrance, there is a marker.

The Witness: How much in feet?

Mr. Coleman: 6,724, they stated. I gave the number of it.

The Witness: The highway marker?

Mr. Coleman: The Coast geodetic marker.

The Witness: That would mean about 24 feet. The roadway is about 24 feet above.

Mr. Coleman: That is a difference of some two or three hundred feet from what you stated.

Hearing Officer Wood: Gentlemen, is this material?

Mr. Coleman: It is part of the terrain.

Hearing Officer Wood: No sense in cluttering up the record with things that may not be material to the issue.

Mr. Lawrence: I think we can agree Mr. Sanborn's figures were approximate.

Isn't that so?

Mr. Coleman: Good enough.

The Witness: They are all right, as far as I am concerned. If I was in error to their references, why, I stand corrected.

[Tr. 21] Mr. Lawrence: These pictures are offered.

Hearing Officer Wood: No. 13. No objection; they may be received.

(The documents above referred to were received in evidence as Contestant's Exhibits 4 through 13, inclusive.)

By Mr. Lawrence:

Q. Mr. Sanborn, did you learn from the claimant what values are ascribed to the materials on these claims and what the uses of the materials may be?

A. Yes, I did. I believe the application's principal value attached to the material of rock occurring within these claims was that for building purposes.

Q. Now, I don't believe—Describe this material which you found on the claim in relationship to its suitability for being made into building materials or rocks of suitable size; in short, its workability?

A. I mentioned that the general character of the quartzite rock within the limits of the claim, insofar as the massive outcrops are concerned, or insofar as the outcrops are concerned, was that of massive bedded materials.

Quartzite is a rock of varying chemical composition, which is essentially a cemented sandstone, wherein the cementing has developed to the extent or degree that the rock is so homogeneous that fracturing of it is across the grain, as easy [Tr. 22] as in the cementing materials surrounding the grains; in other words, that in essence distinguishes quartzite from sandstone, sandstone being of less indurated character. So that upon breakage the fracturing takes places around the grains of sand versus that of across the grains or through the grains, in the case of quartzite.

Quartzites are laid down in beds, rather, is bedded material, some of which is thin-bedded, some of which is massively bedded.

As indicated by my examination, this particular material can be sondiered massive-bedded quartzite.

In the mechanical breakdown or disintegration of the massive beds, which I have mentioned previously, the rocks take a variety of shapes, for the reason that it is massively bedded.

As a result, there is only a limited portion of the products of disintegration which are suitable for use in rock work, the bulk of the material falling in the category of rubble.

I believe the pictures bear that conclusion out.

Now, for many, many years the quartzite on Gold Mountain ridges extending from Gold Mountain have been used locally and to some extent somewhat distant from the area for fireplaces, rock walls, and to a very limited extent for veneer-type of construction.

[Tr. 23] Examination of sales receipts, which Mr. Coleman made available for my consideration, indicated numerous small sales have been made over the years.

As a matter of fact, the application itself indicates that some thousand tons or in excess of a thousand tons was disposed of since Mr. Coleman's location of the claims in 1949.

Likewise, the value of the rock mentioned in the application was that of averaging $12.00 a ton.

So some $12,000 worth of rock apparently, or in excess of $12,000 worth of rock was disposed of in the interim between Mr. Coleman's location of the claims and filing of the application for patent.

In considering the sales receipts or records of transactions in 1957, from January until the date of my examination in October, it would appear that some 52 tons of quartzite rock had been disposed of on a weight basis, and that some 515 square feet of material had been disposed of on a footage basis. The value of those particular sales roughly amounted to $1,025.00.

Considering the material sold by footage to have been in the magnitude of six inches in thickness, some 22½ tons of quartzite was involved in sales of that nature. So, in essence, roughly, 75 to 80 ton had been sold in 1957 between January and the early part of October for some $1,025.00 or thereabouts, which would indicate the average value in money [Tr. 24] per ton unit received by Mr. Coleman for this material, was between thirteen and fourteen dollars.

Q. Would you describe the improvements that you found on these claims?

A. No. I do not believe that I did in sufficient detail, if I did at all. Actually, the improvements I found consisted principally of improvements which were of the nature to facilitate the removal of minerals from the claims, were in the nature of roads.

They are shown in a dashed line on Exhibit No. 1, and they extend upslope in a rather circuitous manner at a very steep grading, through Claims 1, 4, 5, 6, 7, 8 and 10.

Additionally, there is a road which skirts the edge of the Baldwin Lake bed depression to the south and east of State Highway No. 18, the same extending through Claim 10 and 20 to an area of borrowing in the west central part of Claim No. 20.

Additionally, there were observed a number of brushed ways which traverse through Claims No. 4, 6, 7, 15 and 16.

These are shown on, in part, at least—they may not all there be shown, because they are of such nature that some perhaps could not be discernible—they are shown in a dotted line or in dotted lines upon Exhibit No. 1.

Q. Have you had any experience in the construction of roads and ways such as those you have described?

A. Yes, I have. I have worked in operations where [Tr. 25] dozing equipment has been used, and I have some appreciation of the amount of work which can be produced by a dozer under conditions which exist, appear to exist within the limits of the claims.

Q. Would you be able to make an estimate of the value of the improvements which you have just described, as you found them on each claim?

A. Well, my appraisal of the work of the improvements found on the claims are essentially as follows:

On Claim No. 7 I am of the belief that the road extending through the claim to the meadow area could be constructed by a bulldozer, a D-8 bulldozer, in one day's operation, and at $15.00 an hour the most that could be attached to the work of that would be $120.00.

In Claim No. 6, the road there likewise was slightly heavier construction—I believe at one point it would possibly have necessitated blasting. My opinion, at the maximum, two days' work with a dozer would do the job, or roughly $240.00 at $15.00 an hour, figuring an eight-hour day.

On Claim No. 8, the worth of the work evidenced in the roads thereon, I feel, was in the neighborhood of $240.00 or two days' dozing work.

Claim No. 5, I consider that the roads thereon could have been built by a dozer in three days' time at $120.00 a day or $360.00.

[Tr. 26] Claim No. 4, I figure two days' dozer work, $240.00.

Claim No. 1 and 10, figure particularly one day dozer work would do the work that is evident there, or $120.00.

The road which was referred to as lying south of State Highway 18 down in the flats, one additional day in Claim 10 and 20 would cover, be sufficient to have performed that particular improvement.

As to the brushed ways, which I referred to, I figure that these brushed ways are essentially that of limbing trees that might have been in the way, in the way of the vehicle which would traverse, proceed down-ridge or across the slopes, in the picking up of quartzite masses, which might be sufficiently high to cause an accident to a vehicle, in the manner of punching the underportion of the vehicle.

I figure that five days' labor on each particular claim would perhaps do the job at $20.00 a day. Such work would be in the neighborhood of $100.00 per claim valuation.

Additionally, there is depicted on the map, likewise, by dots somewhat closer together, a route which is a trail of sorts, which extends from the meadow, the rocky meadow area, in Claim No. 5, northwesterly to Claim No. 14.

Actually, I could not conclude that that particular trail facilitated the removal of any quartzite fractions that occur or exist within the limits of the westernmost claims. Such quartzite wouldn't be packed out on a person's back, nor [Tr. 27] is it of such high value that it would be profitable to move it by mules or anything like that.

Now, additionally, the property was equipped with two trucks and a residence, a crusher, which was not in operating condition, never having been set up.

At the most, I attached a value of $1800.00 to the house, $1800.00 to the equipment, or roughly for the 18 claims it would be a maximum of $200.00 for each and every claim of the 18 involved.

Q. This equipment was portable?

A. Yes, sir, with the exception of the house, of course. The house isn't portable in a real sense, but the tools and the trucks and the crusher could, of course, be removed at any time, and were not a real part of it that I attached to the property in the real sense of the word.

Q. Then the improvements which you have found that were attached to the property were the roads which you described and the trails and the house, is that correct?

A. That's correct. Additionally, there could perhaps be some consideration given to the site development, sorting site development in the central part of Claim No. 5, which was the claim on which there appeared the greatest amount of material had been removed, and it is shown on Exhibit No. 1 as a circular area in the very central part of the claim, and it is difficult to attach value in the nature of improvements [Tr. 28] for the reason that it is hard to judge the worth of that particular activity or operation, insofar as it facilitates the removal of other quartzite material, being upon the claim.

I suppose that that particular—much of that was done by hand and perhaps would have to be done by hand, especially if the material was picked up and hauled down the slope of the hillside by vehicle. As to just what value to attach to it, it is very difficult to say.

Q. Now, were you able to determine the quantity of this material that had been removed from the various claims, approximately?

A. Not in any satisfactory way, for the reason that the actual discernment voids or space from which material had been removed was very difficult to ascertain, and I am satisfied with the volume, the weights, as indicated on the patent application and as shown by sales receipts in Mr. Coleman's possession.

It would appear that the ownership, over the period of ownership, these claims—some 100 to 150 tons per year have been removed from the claims.

Q. Well, were you able to determine whether from some claims, at least, a comparatively large quantity had been removed?

A. Well, actually, the claim that evidently most of the material had been removed from would be Claim No. 4, an [Tr. 29] indeterminable amount, for the reason that it actually is a talus slope, which extends into Claim No. 1, and which obviously material had been taken from within the limits of Claim No. 1.

I would say that insofar as sales go, the material removed was that of Claims 1, 5 and 8.

I might say further that in the interim of between my examinations considerable activity had been undertaken upon the claims, the nature of which was that of borrowing or excavating of the finer graveling fractions below Highway 18 in Claim No. 1 and possibly Claim No. 10. This material was dug up and some of it is piled adjacent to the area from which it was dug, and I understand that there were certain sales made of it. It is a sote fine fragmental material, the rock fragments of which are quartzite.

Additionally, in the vicinity of, rather, extending south and east of the toe of the talus shown in Claim No. 4, a grizzly had been installed, crusher, conveyor belt, vibrating screens which affect the classification of material into, I believe, three or four products. The particular improvements which I referred to are depicted on a photograph which I took on September 11th.

Mr. Lawrence: May this picture which the witness has produced be marked for identification?

(The document above referred to was marked for identification as Contestant's Exhibit 14.)

[Tr. 30] By Mr. Lawrence:

Q. Did you describe that fully?

A. Well, the features shown in the left central part of the picture are that of a grizzly, an incline paralleling bar series of railroad irons, which affects the sizing of material which could be obtained or was obtained upslope from the improvement, everything going through the bars of the grizzly being minus six-inch and the coarse thereof skidding or tumbling downslope of the grizzly to coarse material pile, which is shown below the grizzly.

From there the material goes up the conveyor belt to the fines, the minus material, and I believe that three groups sizing of materials affected the various fractions of which are led, so to speak, to individual piles by pipe which is discernible in the right-hand side of the picture.

The vibrating screens, which consist of a bed of screens of different diameters or size openings, is housed or shown within the framework in the right central part of the picture.

It is driven by an electric motor, which is likewise underneath the sheetiron roof, which is shown in the picture.

Q. What kind of material is it that is separated by this mechanism, building stone or some other material?

A. Well, it would appear that two different types of material were being separated at the time, were about to be [Tr. 31] separated. One, that of quartzitic material, of angular size, which reposes in the talus slopes on Claim No. 4, and, additionally, gravel which was said to have been hauled in from property other than that involved within the patent application.

Q. Does that complete your description of the improvements?

A. Well, I think that for the sake of attempting to give some consideration to values of the roads involved, and the nature of the construction that was described, attempted to be described, there are a few pictures which I think will merit introduction.

That particular picture was taken by me in October, 1957, and it shows the nature of the surface fractions, in which the road generally was constructed within the limits of Claims 4, 5 and 8.

Mr. Lawrence: I would like to have this picture which the witness described identified.

(Thereupon the document referred to was marked for identification as Contestant's Exhibit No. 15.)

By Mr. Lawrence:

Q. Now, 15, Mr. Sanborn, illustrates the kind of roads which you described as roads which could be put in by bulldozer?

A. Yes, sir. Now, additionally, Exhibit No. 10 likewise shows the nature of the road construction, and I might say [Tr. 32] that that is the cut that was made at that particular turn, was a maximum height of cut, which was evident to me, in my examination.

My notes indicate that this particular height of bank at the turn was nine feet in height.

Likewise, my notes indicate that the maximum size quartzitic rock which is evident in that bank is a foot square.

Mr. Lawrence: I would lke to offer these last two exhibits in evidence.

Hearing Officer Wood: 14 and 15. Any objection?

Mr. Coleman: No objection. I have some others to offer later.

Hearing Officer Wood: With no objection, they will be received.

(The documents heretofore marked for identification as Contestant's Exhibits 14 and 15 were received in evidence.)

The Witness: This particular picture——

By Mr. Lawrence:

Q. You were speaking of another picture?

A. Yes, sir—was taken by me, and I believe that was taken in the western part, west central part of Claim No. 6, and it shows the nature of the brush way which I referred to as being, extending through Claim 6, the western part of 4, Claim 7, 9, 15 and 16.

Mr. Lawrence: I will offer this picture in evidence.

[Tr. 33] The Witness: That picture was taken looking in a westerly direction.

Hearing Officer Wood: If there is no objection it may be marked 16 and received in evidence.

(Thereupon the document referred to was marked Contestant's Exhibit 16 for identification and received in evidence.)

The Witness: This photograph was taken by me in September, 1958, and depicts the sorting area which I endeavored to describe as being in the central part of Claim No. 5, in which I was unable to attach real worth insofar as it facilitates the removal of other rock upon the claim.

Mr. Lawrence: I will offer the picture which the witness just described in evidence.

The Witness: This picture was taken looking in an east to southeasterly direction from the western part of this sorting area, the sorting area being some 110 feet long and some 60 feet in width.

Mr. Lawrence: What claim is that?

The Witness: That is the central part of Claim No. 5.

Mr. Coleman: What was that?

The Witness: Where your turnaround is, where your dynamite is. You see that piece of mud over there.

Hearing Officer Wood: That will be marked 17, if there is no objection, and received in evidence.

[Tr. 34] (Thereupon the document referred to was marked Contestant's Exhibit No. 17 for identification and received in evidence.)

The Witness: This next photograph was taken by me in September, 1958, actually, September 11th, and it shows the quarrying, the site of quarrying being presently carried within the western part of Claim No. 8.

I understand that Mr. Coleman recently sold material for a job from this particular site.

The angular character of the material which is effected by blasting and then by hard work with a double jack and wedges, is shown in the lower right-hand side of the picture, and the size comparison is indicated by the prospecting pick, which is shown standing upon one of the angular quartzite masses.

Mr. Lawrence: I will offer this picture as the next exhibit.

Hearing Officer Wood: It will be marked 18. Are you offering it?

Mr. Lawrence: Yes, I am.

Hearing Officer Wood: Any objection?

Mr. Coleman: No, none whatsoever.

Hearing Officer Wood: No objection, it will be received in evidence.

(Thereupon the document referred to was marked for identification as Contestant's Exhibit 18 and received in evidence.)

[Tr. 35] By Mr. Lawrence:

Q. Does that complete now the description of the improvements that you found and of the materials on it?

A. Well, I did not mention, as I should have, perhaps, the string development in the southern part of Claim No. 1 below and to the south of State Highway No. 18.

I attached a valuation of 10 days' labor to that particular development, which would amount to some two hours at a scale of two and a half dollars an hour.

And, additionally, materials which was used in walling up the spring, being quartzite rock from the claim itself, and mortar, I attached a value of $50.00.

I figured the spring development might have a worth of $250.00.

Now, upon the occasion of my visit to the property on September 11th, I found that additional work had been done at the spring, consisting of the sinking of circular caisson. I didn't measure it, but I would imagine it is two feet in diameter. Nor did I measure the extent of it. But I believe that it extends into the bed of, or into the erosional accumulation comprising a bed, or the edge of Baldwin Lake, to a depth of perhaps three feet.

A pipeline also extended from this particular improvement northeasterly, and I presume extended to the classifying facilities or sizing facilities which I mentioned as existing [Tr. 36] within the northeast corner of Claim No. 1.

There is an air cooled engine and pump there, all of which were portable type of material.

Q. Now, did you have any occasion to inquire into the available markets for material of this sort?

A. Yes, I did make an investigation of possible market for rubble material as occurs generally with the limits of the claims, both in the San Bernardino and Riverside area, and likewise I made one inquiry in the Los Angeles area, and I satisfied myself that a market for such material is very limited for reason of its difficulty in working up, its lack of adaptability to mass construction processes, and, thirdly, its weight.

In other words, this rock is extremely tough. It does not shape with ease. When it breaks, most of it will break in a way that is unpredictable. In other words, the material that is suitable for flag use or veneering, in my opinion, it comprises an extremely small portion of the material occurring within the claims.

The sources which I went to moved little if any of the material, and this removal was not on a continuous basis. It was a sporadic basis, a do-it-yourself type of activity, rather than on a use in connection with contractors in the business of producing homes.

The area, unit area facing per ton of this material [Tr. 37] is very low. In other words, compared with other rock which is more uniform, more susceptible to sizing, being —shaping into material that is easily laid up; just as an example, I understand that on the average this material, a ton of it, rubble-type material, will cover 25 square feet of surfacing.

A ton, for instance, of diamond spring rock, which is sold in the Redlands area, covers 60 square feet. Likewise, Arizona flagstone will cover, a ton will cover on the average of more than a hundred. I have been told it will cover as much as 140 square feet.

So it is obvious that the weight and the shape have a great deal to do with limiting the use of this material, for it cannot be stressed too strongly that it is tough, indestructable rock.

Q. Does the difficulty of working this rock affect the amount of weight to be expected?

A. Yes, sir, it would.

Q. In what way?

A. Well, in the first place, when you attempt to break it, if it breaks into pieces smaller than is suitable or adaptable to heavy rock wall work, it has no particular value unless one would crush it as a coarse aggregate, but as building material I would say it had no value.

Q. Now, did you make any determination as to the, how common occurrence there is of quartzite such as the quartzite [Tr. 38] on this claim or these claims, or nearly the same kind of quartzite?

A. Well, I think the map itself gives some idea.

Q. Which map?

A. Exhibit No. 1 gives some idea of the fact that this material does extend beyond the limits of the claim, Gold mountain being quartzite, and all the material in the talus to the west of the claims and the north of the claims likewise being quartzitic.

Additionally, the Report No. 31, which is Exhibit No. 3, indicates the extent of this particular quartzite which is classified or designated in that particular publication as the saragossa quartzite.

This same material was mapped by Francis Vaughan in a publication entitled "The Geology of San Bernardino Mountains West of San Gorgonio Pass."

This publication was by the University of California Geological Department, was made in 1922, and the geology worked out by Mr. Vaughan is shown on a map attached or accompanying the publication mentioned, and he indicates that the saragossa quartzite is a very extensively occurring material extending north, east and south of the area depicted on Exhibit No. 1, and a very crude calculation of the area shown in this particular map, from a very crude comparison, it would appear that the land area or the quartzite involved within the limits [Tr. 39] of these 18 claims comprises perhaps one-fortieth or less of the area mapped as saragossa quartzite.

Q. Now, Mr. Sanborn, basing your answer upon the experience you have outlined and upon the facts you have described, would you state whether or not in your opinion a prudent man would be justified in expending time and effort in the development of these claims or any of them, with the expectation of a profitable operation?

A. From my examination of the claims involved, my consideration of sales receipts, from the record of sales, and the value of sales made during the period of ownership of these particular claims, and my further investigation of the market potential, I am of the opinion that no appreciable increase could be expected in the sales or outgo of this material, and that, as indicated by the sales receipts, I do not believe that the income derived directly from the disposal of this quartzite, which I believe will become more difficult to produce as the more usable fractions are sorted out, that a prudent man would not be justified in spending time and money with a reasonable chance of success.

Mr. Lawrence: I have no further questions.

Hearing Officer Wood: Well, gentlemen, it is a quarter past 12:00. What is your pleasure as to lunch? Would you like to take as little time as possible so we can get this over, perhaps 45 minutes; would that be sufficient?

[Tr. 40] Mr. Coleman: It is all right with me.

Mr. Lawrence: We expect to see another man at 1:00.

Hearing Officer Wood: Off the record.

(Discussion off the record.)

Hearing Officer Wood: On the record.

Cross-examination.

By Mr. Coleman:

Q. Mr. Sanborn, in your examination of those roads last September, you rode over fairly smooth roads, drive freely with a car; you didn't have to hesitate or have trouble getting up to the points that I took you to, or you went to yourself, did you?

A. Which point?

Q. All over, the open roads, there had been considerable work done. They were pretty level. There wasn't much visible in the way of big outcroppings that you had to worry about knocking your axles or anything of that kind?

A. No, that is true.

Q. They were in pretty good shape, and they are in better shape now, I would say.

A. I drove over them yesterday, and I had to go extremely slow and I did hit the bottom on numerous occasions.

Q. Not on the lower part?

A. I drove up as far as the bench, which is really the first bench in the central part of Claim No. 6; there is a [Tr. 41] promontory there.

Q. I am speaking of the roads that have been recently graded that you have been on. I don't mean out in the open, because I haven't done any work out there since last fall.

A. I would say up to and including the road within the limits of Claim No. 8, which you described, are very well taken.

Q. Up to the point that recent blasting is shown?

A. Yes.

Q. That is all good road?

A. Last exhibit, yes.

Q. You never saw any of that road in its original state; you weren't there?

A. No, sir, Mr. Coleman, but——

Q. You just estimate how much work was done, how much you see now.

A. The terrain, topography, the nature of the material immediately above and below the road is discernible presently.

Q. Yes.

A. And to me it doesn't appear that it would require any heavy construction to build that particular road.

Q. However, I have a number of photographs—I can't offer them as permanent evidence here because I have no copies or negatives—but they are photographs that I took or other people took of me. One, I was working that road, building it, [Tr. 42] and it was plenty rough.

A. I observed a very rough place in Claim No. 6, which obviously you had to do some blasting on, and you filled in with the material you blasted.

Q. You noticed yesterday there was one place where I put a string of rocks around a recent washout on a switchback.

A. Well, I noticed some gullying in the roads.

Q. That whole turn was solid rock. It was just covered with a thin film of material and hand-picked every inch of the way. I spent weeks on that turn before I could actually make the turn with a tractor, let alone make it with a car. That was only one of them. I have got photographs in here.

Hearing Officer Wood: Mr. Coleman, you are making assertions now. You understand, I just want you to cross-examine him. When you make the assertions that you spent weeks and so forth, you will have an opportunity later on to make all of those assertions and offer evidence.

By Mr. Coleman:

Q. You saw that gully and that is all recent rainfall?

A. Yes.

Q. We had a very heavy rainfall up there recently. But you did not see the original work; you haven't even seen photographs of it because it wasn't——

A. The original ground surface before the road was built——

[Tr. 43] Q. Or much of the work that I did originally.

A. Well, I wasn't there while you did it, Mr. Coleman.

Q. So I have to describe it later. That is one question I wanted to bring up.

Another thing, I wanted to ask you—Can I ask this question now—It is in regard to his evaluation of the work done there.

Is the sale or production of the mineral that is marketed considered as part of the assessment work or improvements, the values that you spoke of there that you saw in my sales book, aside from the roadwork, which is permanent itself.

A. In my opinion, it would not be. In other words, the only work that I understand that I should consider as improvement work in connection with patent applications is work which actually facilitates the removal of the remaining portions of the mineral deposit upon the ground.

Q. How about in this area you spoke of 60 feet wide that you called a sorting area, in which I had to remove the whole massive deposit from the surface in order to even make a sorting area; the whole surface was exactly the same as the part around the area when I started.

A. Well, it is very difficult for me to attach a dollar valuation; for instance, this sorting area which you have described, as I envision it, its only worth in connection with the future production of work is that of a place to pile the [Tr. 44] material as you break——

Q. It does have a value for the maneuvering of vehicles and stockpiling and so on?

A. Well, that I would say is more in the nature of a road, which I gave valuation to or attempted to, in my estimate of the number of days' bulldozer work on Claim No. 5.

Q. Another thing, you spoke of the effort becoming harder as time went on to sort out usable material.

Have you seen any quantity of waste anywhere, where I have worked, as if I had left a lot of thrown a lot away?

A. None that I would consider as pure waste. Now——

Q. I used a little on the shoulder to build, a little, but aside from that there was no waste. It is all usable.

A. As I say, Mr. Coleman, the depth at which you have borrowed or removed material is extremely shallow, and when any surface configuration is as rough as it is upon your claims, I can't tell whether this void that now exists had some rock in there which you removed.

Q. I have some photographs of that.

A. It is very difficult for me.

Q. I have some photographs of that particular place the first day I got in there. I will exhibit those in a minute.

In your opinion, what is the practical way to quarry, to bench off from the top part or just dig a hole in the side and go in?

A. Well, I would say it would depend on how much [Tr. 45] material one expected.

Q. If you are looking to a long-term operation and sufficient material to justify a large machinery installation, and to keep going, would you bench out from the top or dig a hole in it?

A. Well, there is no question that from the standpoint of removal of material for generations to come, it would be more feasible to come down from the top.

Q. Right.

A. Providing—it depends on what you are going to do, actually. As I see it, you could drill extremely deep holes and blast material, if it is just going to be riprap type of material, why, I know of many, many quarries that are in going operation that the face of which are very high; they are dangerous, I will admit.

Q. There is the point.

A. But sometimes it has to be done that way, in other words, for reason of property ownership.

Q. It doesn't have to be done that way here, does it? I have room to bench off, is that right?

A. Well, I guess you have.

Q. That is the objective in laying out those roads.

A. Yes.

Q. To have room and not create any hazard. Easy grades.

A. As far as easy grades, the existing roads are very [Tr. 46] tortuous.

Q. You have to start, because you work from the top down as practical.

Mr. Coleman: I think that is all in regard to the benching off and the reason for doing that.

Hearing Officer Wood: I want to say, you may take your time. Don't rush yourself. You are not represented by an attorney. I want to help you all I can in any way that I can, and if you want to hesitate and talk to your Mrs. there, who is your partner in these claims, and then come back to Mr. Sanborn, you may do so, and just take your time.

Mr. Coleman: I just wanted to bring out the point there that there is reason and logic in the benching off from the top.

Hearing Officer Wood: Gentlemen, then we will take a recess for lunch. Be back here promptly at 1:30.

(Whereupon the instant hearing was recessed until 1:30 p.m. of the same day.)

[Tr. 47] AFTERNOON SESSION

(Whereupon the hearing was resumed, pursuant to the recess, at 1:30 o'clock p.m.)

William C. Sanborn, resumed the stand and, having been previously sworn, testified further as follows:

Hearing Officer: Would Mr. Sanborn—you are cautioned you are still under oath to tell the truth and nothing but the truth.

Mr. Coleman, any further cross examination?

Cross-examination. (Continued)

By Mr. Coleman:

Q. I would like to ask another question. You stated in your resumé of experience that for quite a number of years past you have been employed by the Forest Service, the Bureau of Land Management, and other private enterprises.

Are you faced with the problem of paying the bills in regard to any of the enterprises, and facing costs yourself, or are you just making estimates from what you see?

A. Well, in my operating experience, when I was directly connected with economics of the operation, that means paying the bills.

Q. That was how long ago?

A. From '34 till '42.

Q. You wouldn't be closely in touch with the expenses that [Tr. 48] are incurred under present-day operations, then, because they vastly changed in that time.

A. Well, I have an appreciation of the fact that they are materially higher than they were in the 1930's, and also in the '40's, and everything is very expensive, including labor and materials, supplies.

Mr. Coleman: I think that is all I need to ask Mr. Sanborn now.

Redirect examination.

By Mr. Lawrence:

Q. These roads on the claims which you described this morning, are they in such condition as to permit constant truck haulage over them?

A. Well, I believe the roads, insofar as Claims 1, 4, 5 and 8 are concerned, are presently in condition that would permit truck haulage constantly, that is, small-capacity type of trucks. They would not be suitable for any large tonnage vehicles of a nature of a truck to go over these claims. The turns are too short and I doubt the steepness of the grading is such that it wouldn't be the best use of equipment.

Mr. Lawrence: That is all.

Hearing Officer Wood: Mr. Sanborn, in your estimation of the values of the improvements upon the claim, Mr. Coleman has asked if you were familiar with the present-day market.

Now, did you base your value upon the present-day [Tr. 49] market of $2.50 an hour for labor, or the 1934 market?

The Witness: I estimated or appraised it on the basis of current labor costs and likewise current rental equipment costs.

Hearing Officer Wood: Anything further, Mr. Coleman?

Recross-examination.

By Mr. Coleman:

Q. You say that you rather doubt that present-day trucks of fairly large capacity can bring loads down there?

A. I think to do it safely is doubtful, in the turns; as you know, they are very short, and a long-wheelbase truck would have—I don't believe could make the turns.

Mr. Coleman: Mr. Sanborn has stated what he thinks of the curves. I think that is all the questions I have to ask. I suppose I can tell what we are doing.

Hearing Officer Wood: Yes. If there are no further questions, you may be excused.

(Witness excused.)

John A. Burman, having been duly sworn, testified as follows:

Hearing Officer Wood: State your name for the record.

The Witness: John A. Burman. I am the Southern Division Manager of Western States Stone Company.

Direct examination.

By Mr. Lawrence:

[Tr. 50] Q. Will you state, Mr. Burman, what the nature of the business of that company is and how long you have been in business of that kind?

A. Western States Stone Company is primarily a marketer, producer and a distributor of natural stone products. Our company has been in existence since approximately 1948. I have been with the company for almost ten years.

Q. What kind of stones is it that it handles, or rock?

A. We handle any natural stone that is marketable for the use in buildings, and materials such as that.

Q. Where is this company located?

A. Our home office is located at Santa Clara, California. I am out of the Los Angeles office.

Q. Is it one of the biggest companies of its kind in this area?

A. Yes. Western States Stone is the largest concern of its kind west of the Mississippi. I say "of its kind," in the field that it is in, the type of stones.

Q. Could you indicate in very rough figures the quantities of stone that your company handles?

A. The quantities?

Q. Yes.

A. I can only do this: It is kind of hard to give in quantity. Let me put it this way: I will give it to you in dollarwise.

I would say that this year we will probably do somewhere in [Tr. 51] the neighborhood of between two and a quarter and two and a half million dollars gross business.

Q. Is that in the Southern California area?

A. No, no, sir.

Q. Throughout the state?

A. That is throughout the United States, because we ship all over the United States.

Q. Did you have any experience with building stone or rock prior to being with this company?

A. Yes, yes. I was indirectly; I was in the transportation business, and we were in the business of hauling stone out of Arizona to California.

Q. How long was that?

A. Well, actually that movement started just prior to the war, World War II, and it was curtailed considerably during the war, and then it started up again right after, and I was——

Q. In this hearing we are discussing certain rock which is round in some mining claims which are depicted in a map in front of you, which has been labeled Exhibit 1.

I wish you would look at that map and in particular the area shown on there as mining claims, bearing various numbers, and state whether you are familiar with the rock which is found on those claims.

A. I am familiar with the rock primarily off of Mr. Coleman's property, and I am only familiar with that on the site. [Tr. 52] I have been up there once, and I believe Mr. Coleman and I went up above his place there on a road that he is putting in at that time, and we did considerable wandering through up there.

Q. What was the occasion for your visit to these claims?

A. At that time Mr. Coleman wanted me to look at some of the areas up there that he was opening up, which prior to that time had not been accessible to get at, due to the terrain.

Q. Was there any intention that you should handle the rock through your company?

A. At that particular time, yes, there was some activity in what we call the Big Bear Stone. Also due to the fact, as I said, that he was putting in roads up there and had made some new types of Big Bear Stone available.

Q. Now, did you form any opinion at that time as to the marketability of this Big Bear Stone, as you call it?

A. Well, forming an opinion is strictly—our opinion merely goes by what the public wants, what we can sell the public. Would you clarify that a little more?

Q. Did you reach any conclusions, Mr. Burman, as to whether or not your company would be able to handle this stone on the claims and sell it?

A. At that time, as I said before, we had some activity on Big Bear Stone. Naturally, any building material, stone, natural stone that is salable, and there is a market for it, we are interested in it.

[Tr. 53] Q. Would you describe the extent of the activity in that stone in relationship to the stone market generally?

A. I can only speak for our company. But I believe at that time there were several, oh, there were probably a few hundred ton used that particular time. We inventoried it in our Los Angeles yards, also.

Q. And was it practicable to sell this stone?

A. Well, that's kind of a hard thing. When you have numerous items, usually, the call comes in from the retail outlets, and that in turn comes from the public or the architect, and whenever that call comes, they call us, the retail outlets or sometimes an architect will call us to see if something is available. And, naturally, we have always made it available when we have had the call.

Q. Now, how many kinds of stone does your company carry or stock?

A. Well, I believe that there is somewhere better than a hundred on the market right today, different types.

Q. Does your company make them available?

A. Not all of them, no. We make them available when they are called for, yes. I beg your pardon. However, we do not stock all of them.

Q. Now, is your stock exhausted or what is the situation with respect to the Coleman rock?

A. We have not had any Big Bear Stone in our yard for [Tr. 54] the last, about two years.

Q. Is there any reason for that, Mr. Burman?

A. Yes, yes, there is a definite reason for that. The requirements that call for that particular material have not materialized. We have not had enough calls on it.

Q. Are there any characteristics of this stone that would limit the number of calls for it?

A. Well, there we are getting back to taste, public taste. I could probably say lots of reasons why, but then again it is a matter of requests for the material.

Q. And for two years there have been no such requests?

A. Well, no. Let me say, the last request we had—and I just made some checks on this—is that we had a call between five and six months ago for some Big Bear Stone in the Long Beach area.

In checking with the other three wholesale outlets in the Los Angeles area, I find that two of them have the same request about the same time. Now, that is the last call we have had.

Q. Now, do you know if this stone is as susceptible of being used for building purposes as other stones which your company carries?

A. Well, unfortunately, one of the things that we have found in dealing with the different masonry contractors, people like that who install the stone, is that they have a little bit of an aversion to it because they say it dulls their tools. [Tr. 55] They don't like to work it; it is hard. If they can get by with it, they would rather use something softer.

Q. Are there other softer stones readily available?

A. There are a lot of stones on the market practically that I don't feel are very—I am not sure of them for this reason, because they are a soft stone and they are not a good hard stone, your tuffs and your materials like that.

Q. What is it that lends these other stones to the business of being worked by masons which differentiates them from this Coleman stone?

A. Well, the makeup of the stone itself is either a sandstone, limestone, or tuff.

Q. Do you know what kind of stone it is that—how shall I put it—is predominant in the market in Southern California?

A. Yes. You can break that into two parts. The most predominant two stones in the market in Los Angeles in particular, the Los Angeles basin right now, is limestone and sandstone.

Q. And those are different from this Coleman stone, is that correct?

A. Some of the limestones are softer, but some of them are rather hard, also. Some of it, eulytic limestones, are on the hard side, but they are all splitable, most of them.

Q. Have you any ideas as to roughly how many other kinds of stones, that is, other than this Coleman stone, are sold in Southern California each year?

[Tr. 56] A. Roughly speaking, there is probably somewhere in excess of 5,000 tons a month being used; well, it would emanate out of what we would call the Los Angeles area. That is either being used in the area or shipped out of the area. When I say used in that area, I mean that could be shipped out any way from three or four hundred miles and transshipped. I would say in excess of 5,000 tons a month.

Q. And so far as you know, none of this Coleman stone is presently being sold in that market?

A. No. The only sources that I can reliably quote is the four major wholesalers in the Los Angeles area, and of the four wholesalers in the Los Angeles area, three of them have told me that they have not sold any within the last year.

Q. Now, Mr. Coleman's stone, so far as you know, is adaptable to any mass construction techniques?

A. Oh, yes.

Q. It is?

A. Oh, yes.

Q. What kinds of jobs?

A. Practically any jobs that are currently in vogue, primarily the fieldstone type of construction.

Q. Well, does it have thickness comparable to that of other stones?

A. Well, the material comes out in any thickness Mr. Coleman wants to get it out.

[Tr. 57] Q. After it is delivered to you——

A. After it is delivered it may have to be shaped in size and cut down to fit the walls, because we have a certain thickness of walls that we can use it on, normally. Their allowances are normally around six inches, what they allow in walls to use the stone veneer on.

Q. Is it susceptible of being cut down and shaped?

A. It can be shaped, yes.

Q. Is it comparable in that regard to things like, say, Arizona sandstone?

A. It is a lot harder. It is harder to work.

Q. Is there more waste?

A. Your Arizona stones are normally in a wall rock, are processed at the quarry, so the waste is not too great. In any of your fieldstones, or rubble stones, there is considerable waste at times in processing, depending upon the stone.

I would say that Mr. Coleman's stone or the Big Bear Lake stone is no more waste in that than any other stone of the fieldstone type.

Q. That is, if it is used in its condition as delivered or even when it is worked out?

A. There is always a certain amount of work to be done on the stone before it is put in.

Q. Would you be able to form an estimate as to the qualities of stone that contribute to the marketability of one stone as [Tr. 58] against the non-marketability of another?

A. You mean the workability of the stone as it has a bearing on the marketability of it?

Q. What attributes of the stone, in your opinion, cause it to be marketable through your company, for example, as distinguished from the attributes of some other stone which causes the market to reject it?

A. Well, I don't necessarily mean that through our company. I am speaking of all the material through all companies. We are all in the same category.

Q. I don't mean to limit it to your company. I assume your experience——

A. The market, as far as stone is concerned—and I guess anything else—goes in cycles.

We have found that stones of a neutral color, stones of neutral colors such as, we will say, the Palos Verdes stone, which is your grays and buffs, like that, and stone that is called Driftwood, which is coming out of the Blythe area, which is on the brown or warm tones, those stones are right now enjoying the most popularity, as far as tonnage used in the area.

The only thing we do run across once in a while is an opposition, as I have mentioned before, from the individual masons, who are installing this material. If they can get by with it, they would like to use putty, if possible but anyway—[Tr. 59] Let me add this though: There is nothing wrong with the stone, Mr. Coleman's stone. It is a very good material.

Q. As stone?

A. As stone. Yes. It is a very good material.

Q. But it doesn't enjoy any present degree of sale?

A. Right, particularly at this state, it does not seem to enjoy must [sic] popularity in the L. A. area?

Mr. Lawrence: I believe that is all. Thank you.

Hearing Officer Wood: Mr. Coleman, would you like to cross-examine?

Mr. Coleman: I don't think I have any particular questions to ask Mr. Burman. I was acquainted with him, had him up there to look at this setup—I guess it is around seven, eight years ago, isn't it; six years ago, a long time ago.

The Witness: Quite a while ago.

Mr. Coleman: When I first started. They purchased a number of loads from me at that time. There were plenty of business reasons for doing things as I have done them, which I will explain when it is my turn to do so.

Hearing Officer Wood: If there are no further questions, you may be excused.

(Witness excused.)

Mr. Lawrence: The Government will rest.

Hearing Officer Wood: Mr. Coleman, it is your opportunity now to present your evidence, and you may do so in [Tr. 60] narrative form by making any statements of evidence that you have to present, and offer any documents or other exhibits that you wish in evidence.

I will assist you as much as possible to do it in the legal fashion, lay your foundations for them before they come into evidence, and anything that you have now to offer in evidence, it is your opportunity.

Mr. Coleman: May I ask you to read the questions in the Protest that you want answered again? There were two or three questions that you wanted answered there.

Hearing Officer Wood: You say I have two or three questions?

Mr. Coleman: May I ask you to read the two or three questions in the Protest again that you wish answered, and then I will answer each one in narrative form in my own way. You have two or three questions, one in regard to expenditures, one in regard to something else.

Hearing Officer Wood: First of all, Mr. Coleman, this is an application for patent, upon which the regulations require that $500 be expended for the benefit of each claim.

I presume when you talk about expenses that is what you are talking about; you now can prove that you have $500 expended on each claim, is that correct?

Mr. Coleman: Yes.

Hearing Officer Wood: All right, Mr. Coleman, if you [Tr. 61] have such evidence you may present it now.

Alfred Coleman, having been duly sworn, testified as follows:

Direct examination:

The Witness: I have here a letter which can be put in the record, which is a rough appraisal made August 20, 1958, by Mr. Quayle, the bank manager in Big Bear. I request that he make his own appraisal of the value of the labor on the road. It does not cover machinery or buildings or other things. It covers the grading and the general values he saw in driving over the terrain.

Hearing Officer Wood: You desire to offer that in evidence?

The Witness: Yes. In fact, he addressed this to the Bureau of Land Management, and the subject is the mineral application, and Contest 6833 on the heading.

Hearing Officer Wood: May we have that marked as Contestees' Exhibit "A" for identification purposes, and then, Mr. Coleman, you may state what the letter contains and show Mr. Lawrence.

(The document above referred to was marked for identification as Contestees' Exhibit "A".)

The Witness: Shall I read it aloud? Will that be all right?

Hearing Officer Wood: No. State that this letter [Tr. 62] appraises the——

The Witness: Valuation of the grading. In addition to that, I have here an insurance policy on the building and contents.

I make this statement, that a miner is entitled to a place to live, just as well as a homesteader. He has to have some place to reside and work from. This consists of one bedroom, a bathroom, a living room, a kitchen, and a large shop area for maintaining machinery. It is an improvement, permanent, that was put on the place for the production of the mineral.

The insurance policy is for $8,825.00 and was written more than a year ago, and many, many, improvements have been made since to the extent of several thousand dollars since then.

If you took the value of just this letter and that alone, the letter alone covers $15,000, which would be enough to cover 30 claims at $500 per claim. I only have 18.

You have this additional improvement.

Aside from that, there is a sewage system and septic tank developed on the place, my own power plant. I have to produce my own electricity and use it for power tools and machinery. These are all for the production of the mineral.

I have worn out completely and used up one tractor I bought new, and replaced it with a second one for the same purpose, to produce that mineral, and develop the land for a [Tr. 63] long-term project.

That was the purpose of those expenditures, and they are far greater.

Then, if you put along with that the value of my labor for the greater portion of the time, for the last nine or ten years, how much have I expended on that place?

Mr. Sanborn made the statement that, the law makes the statement also, that my claim shall be such as to justify a prudent man to spend time and money upon it.

I have a license right here as chief engineer in the United States Merchant Marine, which the Government gives, as evidence that I must be reasonably prudent to take $10,000,000 worth of ships to sea, which I did during the war many times.

I saw a long-term operation there if someone were to put enough in to justify a large machinery investment, and eventually market the product.

But, as a short-term operation, just going in and digging a 20-acre claim, it would soon be depleted and wouldn't mean anything, and you couldn't justify it. So I went in on a long-range basis.

The first thing that was needed was lots of room, because the type of terrain is so steep that in order to get to the top and bench it off in a proper manner you have to have room for long, easy grades to gain the altitude, which Mr. Sanborn described around 1100 feet, and it is all of that and [Tr. 64] more. So it was based on good, practical common sense.

Another thing, the mining law states that a miner shall work in a practical, workmanlike manner; in other words, you do the things that are right. You don't just do what the book says. Shafts and tunnels are absolutely useless in such a thing.

The geological report, which is in the exhibit, Report No. 31 here, shows the material to be on top and from there, slides down the sides, as Mr. Sanborn described it.

So, in order to work it safely and to have access to all of it and not have waste, you have to start at the top. The first thing that was necessary was access, and that meant roads. Tunnels or shafts were useless.

Those roads had to be built either by expenditures or considerable capital or a long-term labor. I didn't have the capital.

I provided the labor myself; that labor has a value, considerable value, regardless of what it might have cost if a big company had come in. They would have had to have taken risks and paid for them that I had to simply take a blasting risk, for instance.

Hearing Officer Wood: Mr. Coleman, I can see that you are trying to run your record up very definitely without accomplishing too much.

Now, if you want to go the same way Mr. Sanborn did [Tr. 65] there and break down what you estimate the cost to be for these roads, claim to claim, the same way he did, or an over-all estimate, that will serve the purpose just as well as all of——

The Witness: The over-all estimate is here; I didn't ask him to take my figures. He made it.

Hearing Officer Wood: I don't know what Mr. Lawrence is going to say about it.

Mr. Lawrence: I might as well say something on this, that I find in this letter no indication whatever of the qualifications of Mr. Quayle to determine what grading of roads might cost. He may or may not have information in those records, I don't know.

Now, with the understanding that we don't concede in any way that he is qualified to make an estimate, I will have no objection to the receipt of this letter in evidence.

Hearing Officer Wood: Mr. Coleman, this is a banker's estimate. Would you go along with that or do you want to make an estimate of your own?

The Witness: I would go along with that, although I can add to it if you wish me to talk on the subject any.

You noted I asked Mr. Sanborn whether he had ever seen the land as it was originally, and he said no.

Mr. Quayle had seen it as it was originally. He has been up there ten or more years and he has probably financed every sizable building project in that town. He knows all

[Tr. 66] about the construction of the terrain, he knows pretty well what I did.

He came over there and went over it personally, and then he wrote me that letter, had me pick it up at the bank. I think he is very well qualified. I would accept it.

Hearing Officer Wood: There being no objection, it will be received as Contestees' "A".

(The document heretofore marked Contestees' Exhibit "A" for identification was received in evidence.)

The Witness: Now, as in regard to the insurance on the house, which was also written by a qualified insurance company and a good agent——

Hearing Officer Wood: I don't like to do this, Mr. Coleman, but insurance policies—quite possibly you could get an insurance policy for $10,000,000 on that house, if you so desired. They are of a very peculiar nature. They pay off only what your losses are, regardless of how much you get. The amount of insurance that you pay for on your house is immaterial. In other words, you could have it insured for $10,000, and it was completely burned down and they said it was worth one thousand, that's all you would get.

Mr. Coleman: That can be. However,——

Hearing Officer Wood: So they are not worth anything as evidence, is what I am trying to say.

[Tr. 67] The Witness: Well, we can put it another way then. I have considerable shop space there——

Hearing Officer Wood: I would rather take you word on your estimate.

The Witness: I wouldn't replace it for that. I wouldn't replace it for this amount. I couldn't, in labor and material.

Now, when we get to it, I can call Mr. McClellan, who has a very good reputation, a builder, to state what he thinks of those things.

He has leased part of the property to produce other materials.

Hearing Officer Wood: You can state the house is worth so much money and I will accept that into evidence, whatever you think it is worth.

The Witness: We will take the same statement that is right here. We will take this value, which is written here by a competent insurance agent, after he checked a list of everything that was there and examined it.

Hearing Officer Wood: Is that for the house and the furniture?

The Witness: House and contents. The contents amount to very little. We sold our furniture in San Pedro when we moved up. So there you have two items right there, if they were added up, that would amount to far more than the $500 per claim.

[Tr. 68] Hearing Officer Wood: The house, Mr. Coleman, has a certain bearing on it.

The Witness: The shop has more bearing. A great deal of it is the shop. It is larger than the house, far larger.

Hearing Officer Wood: Now, you have gone on to what your expenditures were. Now,——

The Witness: One more thing in regard to expenditures.

Mr. Sanborn stated that a large tonnage had been removed from there. He is right, and it took a great deal of expense to do it, but it all had to be done in making this access. Much of it was other than roads.

He spoke of one sorting area 60 feet wide. It is more than 60 feet wide and much longer now than when he examined it, and it was done for the purpose of making maneuvering space for vehicles, trucks and tractor, the stockpile and to load and remove material, to open the property up so that when you do begin to advertise, which I have never done yet, you can fill orders in an efficient manner.

That is all expenditures and labor than had to be done before you begin to advertise and say, "I can deliver."

I have delivered some fairly sizable jobs, but at long intervals. If I can—I will remind you of something Mr. Burman said. He said he had several recent inquiries, a [Tr. 69] recent order. He was in contact with each of the dealers in Los Angeles, and he had those inquiries, and then the dealer in Long Beach got the order and placed it with me and the material was delivered.

We have a letter of certification as part of this, the application from the City of Los Angeles, approving this material for all structural purposes, according to the Building Code. I have had it renewed again this year until 1961. I believe maybe you have a copy of it. It is in the application.

Hearing Officer Wood: Yes. I have a copy of it. It is from year to year.

The Witness: It has been renewed again until 1961.

Hearing Officer Wood: They are allowing it to be used on a special permit?

The Witness: That's right. They are very prudent, another three years.

Hearing Officer Wood: I have a copy of that letter. I will consider it.

The Witness: It is in the city records down there.

I also have a similar approval from the County of San Bernardino for the use of it in San Bernardino County.

We also had two recent hearings by the San Bernardino County Planning Commission and the County Board of Supervisors in regard to the development of a plant there for producing quartzite products, that is, the plant that was illustrated [Tr. 70] in those pictures.

We have unanimous approval of both the Boards to go——

Hearing Officer Wood: I have copies of that, also, and I will consider it in my decision. It is an approval subject to, I believe, ordinance 24 of the City of Los Angeles.

The Witness: Yes.

Hearing Officer Wood: Now, you have talked about the expenditures.

Tell us what you have on the property and how you intend to dispose of it, what market you have for it.

The Witness: I might say this, that there are many markets that Mr. Sanborn didn't touch on, industrial markets that cannot be tapped until the mill is completed.

He spoke of some materials being waste or hard to dispose of. There is absolutely no waste on that property, not an ounce; as we classify the material out, we have a use for everything, and now, in classifying out the smaller material, you will wind up with sifted topsoil or fines, which are of great scarcity in the Valley, and sell at an extra price per ton or yard as the actual rock does. There is nothing wasted there. It is all salable goods.

Hearing Officer Wood: May I suggest that you go into it from a production standpoint. Tell what you can do or what you believe you can do. "It is going to cost me so much a ton to get it out, so much a ton to deliver it, and I am going to [Tr. 71] get so much a ton for it."

The Witness: May I call Mr. McClellan, because he is in charge of the plant?

Hearing Officer Wood: Yes, but can you state what it is going to cost you?

The Witness: I would rather have him state what the classified materials cost, because he is actually doing it. I am pretty close to it, but he is actually doing it. I can't do everything. I am still handling the ornamental rock. I can tell you what that costs, if you want me to, what the situation is on it.

Hearing Officer Wood: What I am trying to do, I am trying to elicit from you such information and evidence as will refute the charges of the Government, and if you have that, you can produce it.

I know Mr. Lawrence is quite perturbed at what I am trying to do here, but you are not represented by an attorney, and I am trying to assist you. I want you to make your statements and offer any proof that you have.

I see you have a lot of things there that will show that you do have a market for it, a present existing market. You have somebody who will buy it, and how much they will pay for it and how much it is going to cost you to get it out; if you can do that, why, I would like to have you do it.

The Witness: Well, I can say this: I have my current [Tr. 72] order book here, and the current price, the base price of the rock that I have fixed at the quarry, $15.00 a ton for quarry run, broken rock, what Mr. Burman called Big Bear rubble.

From that can be built ornamental walls, a large portion of fireplaces, in fact, a whole fireplace if they are not too critical about its beauty, or like it rough, and many other things of that nature.

As soon as they go into more critical rock, where they want sized material, they have a limited space to build in, then I quote only by the square foot, because I first have to find out what they are going to build and how much labor is involved. Some rock is easier to sort out and split out than others. If they want something that is hard to get, I have to figure the man hours and the time to produce that rock from the source that I have. If you have no source, you can't figure. I have got a wide variety of deposits there, as shown by these photographs. I saw them, and I saw by having them I could go to this one or that one and get something for this purpose or that or the other. That

Hearing Officer Wood: They are allowing it to be used on a special permit?

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It is not like Arizona flagstone that it comes out in a uniform slab. You do some classifying and sorting and splitting to produce it. There has never been too good a sale, not because the rock is not good, but simply because I haven't advertised one single word any place for years. I first wanted to get the thing open to a point where I could deliver in large quantity, and we have about reached that point now. There is no lack of market. The lack is of selling effort.

Hearing Officer Wood: Anything that you have, you may go right along.

The Witness: I might say this: Mr. Burman brought out the point that a particular stone is a matter of taste. That is true. But taste is governed a great deal by advertising. If people do not know about a thing, they are not interested, and if it has qualities and they learn about it, then some of them become interested.

I haven't done a lot of selling because I felt that it is not wise to sell past your capacity to deliver without reaching a delivery capacity first.

I had to make the expenditures to develop before I could——

Hearing Examiner Wood: It appears that the issues in [Tr. 74] this contest are merely the protest against the issuance of a patent, and not involving the end results that——

Mr. Lawrence: We do ask that the claims be invalidated. That is in the prayer. It is correct that this proceeding originated from an application for a patent, yes.

Hearing Officer Wood: Are there any other plans for the land itself, Mr. Lawrence, that you know of, or are they being withdrawn from——

Mr. Lawrence: I am not fully informed about that. I understand there have been some difficulties in administration down there, but the precise nature of them I don't know. I infer that other plans would be developed. It is possible, of course, that the Forest Service might deem it expedient to sell these materials—I can certainly inquire as to whether or not the Forest Service does have any plans. There are people here who know much better about it than I do.

The Witness: May I speak in regard to Law 167, which Mr. Lawrence mentioned?

Hearing Officer Wood: 167, yes.

The Witness: That was instigated long after I filed and was not supposed to affect existing rights; all of those who had claims when that law was put in force were supposed to file a verified statement, which I did promptly, claiming my existing rights, which is what I am asking for now.

That law was to protect vegetative and surface rights. [Tr. 75] In this particular case the surface rights are the mineral rights, as shown by the chart in Report 31, the topmost surface is the rock.

Hearing Officer Wood: This is not a contest under Public Law 167, Mr. Coleman.

The Witness: But he is referring to the Forest Service attempting to sell it under Law 167. How can he even talk of that before there is any justification for invalidation?

Mr. Lawrence: There was an inquiry, that was all. I was asked what the Forest Service might plan in the future. That is what I answered.

Mr. Examiner, I have been advised that there are possibilities on these claims because of the scenic features for the location of a park in certain areas, and they also have in them various recreational features which would make them desirable for other purposes, at least in part, and also the Forest Service has not overlooked the possibility that certain of this material could be sold under 167, if that law should become applicable. So that I wouldn't want to say that the Forest Service is wholly uninterested in these areas.

Hearing Officer Wood: I think that answer [sic] my question, Mr. Lawrence.

You may go right along, Mr. Coleman.

The Witness: I will go along with that same subject for a minute, that when I entered into these claims, in the [Tr. 76] first place, the first thing I did is to go to the Forest Service and search all of the publications of the times to see if the land were open to location, and tell them what I intended to do, and at that time the Forest Service, people who I talked to, said they would be very glad to see someone legitimately go into the quarry business in that area, and I did, and obeyed every single law that I could find in regard to doing so. It would look very bad for the Forest Service now to talk about expropriating my ten years of labor and effort when it begins to take shape.

Hearing Officer Wood: That is a question I can't answer.

The Witness: I know. I am just stating the facts as I see them.

I can provide evidence here as to the fact Mr. Sanborn, the same man, authorized and O.K.'d a settlement of the water right between myself and the Forest Service back in 1950, understanding exactly what I was doing and why I was doing it. I have the letter right here.

Hearing Officer Wood: That may be their opinion that you haven't developed your quarry to the extent that they think is necessary. I don't know.

The Witness: I am trying to say here that I have. I would like to call as a witness in regard to that Mr. McClellan, who will give you in narrative form his statement, what he has [Tr. 77] done and what he has seen, and the valuations he has put on what I have done. He can state his own experience.

You can judge whether it is of value or not.

Hearing Officer Wood: You may call him at any time and then you may come back.

Mr. Lawrence: I assume that I can ask him questions later?

Hearing Officer Wood: Yes.

EDWARD J. MCCLELLAN, having been duly sworn, testified as follows:

Hearing Officer Wood: Will you be seated and state your name for the record?

The Witness: Edward J. McClellan. Do you want my address?

Hearing Officer Wood: Yes.

The Witness: Box 784, Big Bear Lake.

Hearing Officer Wood: Now, you can either ask him questions, if you wish, which he can answer, or he can make a narrative statement from the stand, whichever you prefer.

Direct examination.

By Mr. Coleman:

Q. Will you state your experience and then describe your efforts there and mine, as best you can, in your own words?

A. I have been in the building and construction business for over 30 years, consisting of residential construction, [Tr. 78] commercial buildings, heavy highway work, for the last 10 years or, I would say, from 1948 to 1956. The volume of my work annually was between a million and a quarter and two and a half million dollars of construction, all of which was performed at a profit, thank goodness.

I believe I am qualified by my years of experience to estimate values on the improvements on the properties under discussion here.

First, from my varied construction experience and secondly by construction of a road located about 10 miles from Mr. Coleman's claims in August of 1956. I built this road or hired it done by a reliable Big Bear contractor, who had the largest piece of equipment available on the mountain, a D-6 tractor, and the road was approximately a quarter of a mile in length, and it cost me just slightly over a thousand dollars to build that road over terrain very similar to the roads that were built on the Coleman property.

So I take exception to Mr. Sanborn's estimate of the value or cost of constructing the roads. I believe in my opinion that these roads would cost approximately $9,000 to construct.

I do know this as fact, because it was recently performed, that the grading and grading only I speak of at our plant site cost in excess of a thousand dollars.

The plant as presently constructed, what we have there now, which was described by Mr. Sanborn, we have an [Tr. 79] expenditure of slightly over $9,000. That does not include our trucks and tractors and rolling stock. That is in fixed equipment that is on the property for the processing of our quartzite there. We expect our total plant expenditure before the year is out to be in the neighborhood of around $18,000.

I do claim to be experienced in building construction. I have constructed, as I said, over 3,000 homes, and I do know what it costs to do homebuilding construction.

The shop and residence that Mr. Coleman has on his property I know could not be duplicated for less than $6,000, $7,000, using like materials and present labor costs. That would be a minimum that it could be constructed for, that part.

The water system that is installed on the property purely for the processing of the products there, we have expanded [sic] over a thousand dollars on that alone. Much of that pipe is underground and is not portable. The pump is portable.

Like Mr. Sanborn said the other day, there is a difference of opinion, that is what makes horse races. I can see there is a big difference of opinion as to the value of the materials that are there on the claims, of these minerals that are there, and the quartzite.

We are setting up a plant there to process quartzite products, which will include many things, sand and gravel, roofing granules, soil coat material for the Highway Department [Tr. 80] out of quartzite chips, and there are other markets which we plan, as the plant is expanding, to explore, but have not done until we have the facilities to produce the products.

There are demand for quartzite fines in the molding industry. There are demands for it in different kinds of sands. There are demands for it even for chicken grits. I don't know whether we are going to get into that market or not. But we expect, in our little operation up there, an annual sales volume of not less than $25,000 per year. At the present time it proves that there is some value to the property, because we have four families who are deriving their living and livelihood from that property, so there must be some values there.

I think that the value of the quartzite has been minimized by the Government representatives, and I think the personal opinion as to values enters in there again.

I think, Mr. Examiner, it is expressed and proven by the point that here in this hearing room there are, I think, four quartzite claimholders from the Big Bear area who have shown their interest and expressed their value in their properties by driving 50 miles down here, taking the day off from work, showing their interest in this patent application. I don't know the particular interest in their value, but they have claims there of quartzite, the same products. So they must place a lot of value on those products or they wouldn't show the interest in coming down here. I think that is a point [Tr. 81] that anyone will recognize, that each of these four individuals who own quartzite claims, place a high value on their quartzite or they wouldn't be here. That is just common sense.

As to potential market on the building stone, I have observed on every Saturday and Sunday since we have been on the properties—and, incidentally, we have been working every Saturday and Sunday from 6:00 to 12:00 every day on the week ends—parties who come in to purchase or inquire about purchasing this Big Bear quartzite rock. They come on their own, they drop in. They have been referred there by somebody who has bought quartzite stone, and I'd say at least 50 percent of them leave with quartzite stone.

Some time back a party came in. They wanted a rock about the size of that (Indicating). Mr. Coleman was not home. Not knowing Mr. Coleman's prices for some of his classified stone—he thought he got a great bargain for $4.00, one rock. That's worth a lot more than our minerals that are being mined today for $12.00, $15.00 a ton. That just about concludes my estimate of the values of the improvement, and what we are planning to do.

Do you have any other questions?

By Mr. Coleman:

Q. Will you tell the examiner something about the sales that have already been made from the plant in regard to screen materials for concrete aggregate and so on, just as a [Tr. 82] preliminary run?

A. In July we set up a temporary screen down in the foot of a slide described by Mr. Sanborn as below the road. He described the material in his testimony as silt with fine pieces of quartzite in them. These mills down there are the residue from our operation.

During the months of July, August, and the first part of September, our sales of these products are in excess of $4,000, just in those two and a half months. We sold slightly over $2,000 worth in the month of July. We sold $1,500 in the month of August, and our sales so far this month are approximately a thousand dollars.

As I stated before, we expect our annual sales to be in the neighborhood of $25,000, and that will be a variety of products, from building stone, which we will take off in our classifying process, on down through sand and gravel.

Q. What about the value of the residue that is down there?

A. We are selling some of that residue.

Q. At the same price?

A. About three, four, five loads a week as fill material.

As to market, I would like to touch on another thing. I believe that some place between 40 and 60 percent of the residences, and probably a higher percentage of the commercial buildings that are built in Big Bear Valley, contain some of [Tr. 83] the native stone. Practically all of the residences are built with fireplaces.

I think we have probably four stone masons on the mountain who spend practically all of their time in our area, they book months ahead on building fireplaces out of our native stone. There is a demand in our area.

Building in Big Bear Valley so far this year is over a million and a quarter. We have a local demand outside of the metropolitan Los Angeles area that will keep three or four or five, possibly more men, busy producing quartzite building rock.

Anything further?

Q. No, I don't think of anything at the moment, unless you have some other remarks you want to make on the subject that you have thought of.

Cross-examination.

By Mr. Lawrence:

Q. What is your relationship to these claims?

A. The date of our lease—you have it with you—I have leased a portion of it.

Q. Which portion?

A. We have the lease here.

Mr. Coleman: I will find it. Here is a copy.

A. 17th day of May, 1958.

By Mr. Lawrence:

[Tr. 84] Q. This last May?

A. Yes.

Q. Four months ago. Did you have any relationship to these claims prior to that date?

A. Just a discussion with Mr. Coleman last fall, there was a possibility of us leasing a portion of it.

Q. What portion of it is it that is covered by the lease?

A. Approximately five acres.

Q. Where are they located?

A. They are located in the north one-half, northwest one-quarter.

Q. Of what?

A. Southeast one-quarter of the northwest one-quarter of Section 7.

Q. Could you show me on Exhibit 1 where these five acres are located? Here is 7.

A. In this corner.

Q. Would it be correct to say it is in the southeast corner of Claim No. 7?

A. That is correct.

Q. The southeast quarter of Claim No. 4?

A. Yes.

Q. Is that in the area which is designated "Talus" on Exhibit No. 1?

[Tr. 85] Q. Is it in that talus slope that appears there?

A. Yes.

Q. Now, what materials are covered by this lease?

A. What materials?

Q. Yes.

A. Quartzite, or any minerals we may discover, any other minerals.

Q. Under that lease you can remove any material you wish from the five acres?

A. Except building stone. Mr. Coleman retains the sale of building stone.

Q. Then the material which you have sold is material other than building stone, is that correct?

A. Yes.

Mr. Coleman: Building material.

A. No. We have sold some building stone with Mr. Coleman, but we have a different financial arrangement on building stone between he and I, as far as royalties are concerned.

By Mr. Lawrence:

Q. Now, in whose favor does this lease run, yours or some company's?
A. Mine.
Q. As an individual?
A. Mine and my wife.
Q. Now, you referred to a large number of sales in the last few months. What materials were covered by those sales?
[Tr. 86] A. Mostly all lateral rock.
Q. What kind?
A. Lateral.
Q. Spell that.
A. Lateral rock.
Q. What is that?
A. Rock for leech lines, drainage fields from septic tanks.
Q. I see. Is that the bulk of the sales which you referred to?
A. The bulk, the big majority, yes.
Q. Now, do you know of any other quartzite deposits in this area, more specifically, across the lake to the east aren't there large deposits of quartzite?
A. Yes.
Q. Greater in volume than the deposits on these claims?
A. I wouldn't say greater in volume.
Q. Comparable in volume?
A. Comparable. I haven't explored the area personally too well. I have knowledge of the quartzite.
Q. Do you know if that rock would function for leech lines?
A. Sure, it would.
Q. Equally as well as the rock on these claims, is that right?
A. Except that it isn't as acceptable.
[Tr. 87] Q. That is the difference?

Mr. Coleman: No access.

By Mr. Lawrence:

Q. Would that also be true as to the rock on the other claims covered by Mr. Coleman's application, that it is less accessible?

A. I don't understand what you mean by that. The rock from the other claims wouldn't be——

Q. To illustrate, the most distant claim from No. 4 is No. 14, is it not, in the upper left-hand corner of Exhibit 1?

A. Yes.

Q. That rock is somewhat less accessible, is it not?

A. I have never been up there.

Q. You don't know. You know what if any may be the value of the improvements on Claims other than No. 4?

A. Well, the work that I described in my estimate on the cost of these roads, the grading, compared to what it cost me to build that quarter of a mile two years ago, comprises work that is on claims as shown on Exhibit 1 here, on Claims 10, 1, 5, 4, 8 and 6.

Q. That is the one—that is the work comprising the $9,000 you talked about, is that right?

A. Yes.

Q. Now, do you know whether or not there is any development or any expense of development in the remaining claims?

[Tr. 88] A. Not by my own personal examination. The only thing I know is what Mr. Coleman has told me, that he has done in preliminary road work on those claims.

Q. In any event, the $9,000 you spoke of was just for the few claims you named?

A. That's right.

Q. Would you be able to state how much it was per claim in your estimate?

A. No. I just made my estimate on the total.

Q. What?

A. On the total amount of work that has been done.

Q. You have no idea, for example, then, of how much the value of the roads in Claim No. 8 might be?

A. No. I didn't break it down into individual claims.

Q. And you are not able to do so now?

A. No.

Q. What is the total volume of sales of which you have any information, that is, I mean, sales of work on these claims?

A. Just from our sales records since we started there in July.

Q. Referring then to Claim No. 4, is that correct?

A. And 10 and 1.

Q. Well, maybe I didn't understand you a while ago. As I understood you, your lease covers Claim No. 4?

A. Yes.

Q. Now, is that the source of the materials that you [Tr. 89] have sold?

A. No, we can take materials from any place on any of the claims, but our lease for our plant site covers down on No. 4.

Q. I didn't understand that at all then.

A. That is more or less of a verbal understanding. It is not written in the lease, but we had agreed that if I found a deposit of rock in a certain place——

Q. Perhaps I can examine this lease a moment. I certainly don't understand it.

Mr. Lawrence: May I have a moment, Mr. Examiner?

Hearing Officer Wood: Surely.

By Mr. Lawrence:

Q. I have checked and rechecked the land description in the first recital in this lease, and I located a different claim than No. 4. Now, will you correct me if I am wrong; the northwest quarter of Section 7, that is this; you took the southeast quarter of that?

A. That——

Mr. Lawrence: May we go off the record?

Hearing Officer Wood: Off the record.

(Discussion off the record.)

Hearing Officer Wood: On the record.

By Mr. Lawrence:

Q. Isn't it true, Mr. McClellan, that contrary to your [Tr. 90] earlier statement, the lease covers land located in Claim No. 10, rather than Claim No. 4, is that right?

A. The legal description in the lease, yes.

Q. That is the land to which your lease relates, isn't it?

A. That's right.

Q. It is not located on the slope that you previously stated it was located on, is that correct?

A. It is right at the foot of that slope.

Q. It is in the northwest corner of Claim 10, is that correct?

A. Yes.

Q. Now, the lease covers, if I understand it, sand, gravel, miscellaneous quartzite products, and any minerals that may be discovered, is that right?

A. Right.

Q. That also includes concrete, sand, gravel aggregate, leech line rock, pea gravel, is that correct?

A. You have it in the lease.

Q. Does the lease also provide that you can take these materials from any where on these claims?

A. I don't remember that detail, but that was a verbal agreement.

Mr. Coleman: The lease provided he can sell any quartzite products. There is a certain royalty paid for materials that go through the plant. That is the essence of it. [Tr. 91] No matter what he puts through the plant, I get paid for the use of the plant and something for the materials, if they are taken from the premises.

Mr. Lawrence: The lease also says the sale of all building stone is to remain within the jurisdiction of the lessor, is that correct?

Mr. Coleman: That's right.

By Mr. Lawrence:

Q. Well, the sales which you have referred to in the last four months have been the materials described in that lease, is that right?

A. Yes.

Q. And did you indicate to what extent, if any, building stone is included in that?

A. Not in my figures, no.

Q. You have no information of sales prior to the date of your lease, have you, of your own knowledge?

A. No.

Q. Now, so far as you know, did you state whether the rock across the valley could also be used for the purposes of rock covered by the lease, except by reason of not being so accessible; is that about it?

A. Oh, yes.

Q. It could be used?

A. Sure, it is the same rock.

[Tr. 92] Q. In what respect, if any, does it differ from the rock covered by these claims?

A. No difference, that I know of.

Q. Could it be used for building, same purpose, in the same manner?

A. I assume so. As I said, I haven't made an examination of that area you are referring to.

Q. You have no information that leads you to believe that it couldn't be used?

A. No.

Q. What kind of jobs were these materials used on?

A. Building.

Q. Were these jobs that you built or——

A. No.

Q. Contracted?

A. No, not my own; sales to other contractors.

Q. Is this area of your lease just east of the house that Mr. Coleman has installed there?

A. North and east.

Q. Do you know if any sales of rock material other than the building stones were made prior to your leasing this property? Maybe you have no information. Do you know?

A. Sale of other rock products other than building stone?

Q. Prior to the date——

A. Excluding building stone?

Q. Yes.

[Tr. 93] A. Not to my knowledge.

Q. Do you have any information about any sales made prior to the date of the lease?

A. Oh, yes, prior to the date of the lease, yes.

Q. By you?

A. Yes.

Q. Did you sell them?

A. We hauled material, did the trucking on building stone that was sold by Mr. Coleman for other people last year.

Mr. Lawrence: I think that is all.

Hearing Officer Wood: Any other questions you want to ask him?

The Witness: I might add one point: We have a new truck which has a 190-inch wheelbase and which we haul 10 tons, and we go up to the top of the mountain with that truck, bring down loads of rock. So the road is a good truck road.

Hearing Officer Wood: Mr. McClellan, I am somewhat confused by your statement, "we." Whom do you mean by "we"?

The Witness: Myself. That is just a manner of speech.

Hearing Officer Wood: Well, who owns the machinery on these claims?

The Witness: I do.

Hearing Officer Wood: You own it personally?

The Witness: Yes.

[Tr. 94] Hearing Officer Wood: And did I understand you to say you were a licensed contractor of the State of California?

The Witness: No. I am not a licensed contractor in the State of California. My building construction was all done in Portland, Oregon.

Hearing Officer Wood: That is all.

Mr. Lawrenc: I think I overlooked one point.

By Mr. Lawrence:

Q. You are authorized as lessee, are you not, to remove all the machinery which you have installed when the lease terminates?

A. Yes. I have 60 days in which to remove it. If I don't, it reverts to the claim.

Q. It is your property rather than Mr. Coleman's?

A. That's right.

Mr. Coleman: We both have machinery there. It is entirely his property, what he brought on. That which was there previously was mine, and that has nothing to do with his.

I also have a truck with which I bring rock down from the top, ornamental rock, and another truck and a tractor and a power plant, and I also own a pump and a saw. There is machinery of both of us there, and a truck one inch shorter than his wheelbase.

Mr. Lawrence: I guess the situation is Mr. McClellan is through testifying and Mr. Coleman is back testifying.

[Tr. 95] (Witness excused.)

Alfred Coleman, having been previously sworn, resumed the stand and testified further as follows:

Hearing Officer Wood: Now, Mr. Coleman, do you want to add anything on direct?

Direct Examination: (Continued)

The Witness: In regard to Mr. Sanborn's statement that the road was not usable for large trucks, I took great pains and we had dozers up there several times, besides all the work I did, to see that a sizable, practical truck could go up that mountain, and we do go up it consistently and have been doing so for four or five years. It may not look good in an automobile, but we drive trucks. I have taken stuff to the top of Santa Monica, the top to those mountains. It is a practical road, not as good as we would like it, but practical.

I think that covers the road situation.

Hearing Officer Wood: Anything further?

The Witness: What other questions did you have there where you talked of expenditures? What else was it that you had in mind there? To prove the claim?

Hearing Officer Wood: Let me go again to the charges. The charges are three in nature. It is not mineral in character, that there has been no discovery sufficient to validate a claim, and that——

[Tr. 96] The Witness: Let us take one charge at a time.

Hearing Officer Wood: $500 has not been expended on the Claims No. 7, 9, and 11 to 19, inclusive.

The Witness: Let us take the charge, enough discoveries, first.

The Mining Law states that a discovery is something that would justify a prudent man to spend time and money upon the claim, and also that it must be something of commercial value. I think we have described its commercial value, and Mr. Sanborn stated clearly that there is quartzite on all of those claims.

You can't walk a foot without stepping on it, so I think that covers the discovery.

As to its mineral character, every textbook I have ever read speaks of quartzite as a mineral. It is a mineral, a commercial mineral like limestone and cement, granite, mica, many other things which are not metal or ferrous. I think that takes care of the discovery.

Hearing Officer Wood: Have you satisfied yourself, Mr. Coleman, that you have offered all of the evidence that you might?

The Witness: In regard to the discovery, yes.

What was the next question there?

Hearing Officer Wood: There was the expenditure on the claim I think which you have gone over.

[Tr. 97] The Witness: We have gone over that. What is the next one?

Hearing Officer Wood: That was the only two that were material.

The Witness: He spoke about invalidating the claims for some reason.

Hearing Officer Wood: Of course, the whole purpose of this contest is to arrive at the truth or falsity of the charges presented by the Government.

The Witness: The two disputes are the discovery and the expenditure.

Hearing Officer Wood: That is right.

The Witness: I think we covered those two pretty well. The mineral exists, that is evident.

Hearing Officer Wood: Mr. Lawrence, cross-examine.

Cross-examination.

By Mr. Lawrence:

Q. I would like to have you go over these claims one by one and indicate or state what development work has been done on each of them, and also what sales of material have been made off of them.

A. Well, I will repeat the statement I made at the beginning, that a large area was claimed in order that the access could be made to all of the claims. It was necessary on account of the type of terrain to have long spaces, make grades [Tr. 98] suitable to trucking.

Now, then,——

Q. Does that mean that some of these claims were located for the purpose of providing access roads to the others?

A. No. They all were located because of the quartzite on them, but it was necessary to have enough to justify a long-term operation, and also to get to the top to bench down, because if you dig in the side you create hazards which are costly.

So then I proceeded to open at the bottom first, where the cabin site is; when I started there wasn't enough space to park a single car where the cabin now sits. There was absolutely no space to work.

Q. This is Claim No. 1?

A. Yes. The prime requisite of those deposits is to make access to them, or you can't produce. It has to be in such form you can handle the material with ease, or it will be too costly. So I extended the roads, and as I did I produced from the claims.

All the blasting, all the digging that was done on all the road shown there, whenever material was piled alongside the road, that wasn't used for fill; it was loaded and later taken down and later marketed as production.

Work was done on No. 1 and produced on No. 4——

Q. Wait, please. How much work was done on Claim No. 1?

[Tr. 99] A. There must be a half acre of level ground there. I would have to estimate the tons handled.

Q. What value do you ascribe to the improvements on Claim No. 1?

A. We have the buildings and all of that area that is levelled, every bit of rock of any size, it has been dug and blasted.

I couldn't estimate the tonnage on that exact area in feet now except that there has been a awful lot, much more than you can believe, because it was all ~~one step pitch~~ when I started, and now it is level ground?

Q. Well, you mean you don't know what the value of the development work on Claim 1 is?

A. I have something here that may be a guide. I have a development journal in which I noted down right from the start roughly the things that I did, the history of all the claims here.

I could submit this as a record of my work. It covers the items one by one, page by page, pretty close to the present time. The last entry is June 1st. All this has been done first. 228 items of work, and expenditure, in here, roughly noted in this development journal.

To pick out, you will have to go through it and then start to pick out where I started and what I did,—that's quite a job for 10 years.

[Tr. 100] Q. Are you able to estimate the value of the improvements on Claim 1?

A. I can take a pencil here and start right at the beginning and add up some dollars pretty quick.

I am afraid it would be hard. I kept going back to 1; I would go to 2 and 3 and 4, as need required, and get rock, and I'd go back down and get some more, go up and fight the road some more, and so the work on 1 was scattered all through this record. It isn't in one spot. I would have to scratch my memory and dig up notes by the hour to come——

Q. It doesn't show on your patent application, does it?

The Witness: Can I submit this as evidence and have it returned?

Mr. Lawrence: You will have to ask the Examiner.

The Witness: Can I? It is a record, history of the doings there to a considerable extent.

Hearing Officer Wood: If there is no objection by Mr. Lawrence, I will take it in evidence and return it to you after the case is completed, for what it is worth. I don't know what is in there.

The Witness: It is a history of my efforts there, considerable history, and the values I placed on each effort.

Sometimes it is described as a claim, sometimes not.

By Mr. Lawrence:

[Tr. 101] Q. Have you ever ascertained what the value of the development work on Claim No. 1 may be, as distinguished from the work on all the other claims?

A. No, I have never tried to break it down except, of course, the building and some of the improvement is on 1.

Q. But you have no definite idea of the amount?

A. I could rough it out of here with a lot of work.

Q. At present you don't know?

A. No.

Q. Do you know how much material has been sold off Claim No. 1?

A. That again is the same thing. It has been back and forth. I have worked all over the place single-handed for ten years, top to bottom.

Q. For Claim No. 1, you don't know the amount sold off it, nor the value of the development work on it; that is about correct, isn't it?

A. Not of the exact amount, no.

Q. Can you estimate it?

A. Oh, I can make a rough estimate. If I took Mr. McClellan's estimate of the building at $6,500.00, I would take another three thousand for work and sales off of No. 1—wouldn't be too far wrong.

Q. Three thousand in sales off No. 1?

A. Sales and labor and grading and so on.

[Tr. 102] Q. The value of the improvements, what did you give for that, approximately?

A. Mr. McClellan said a minimum on the house would be sixty-five hundred as it stands.

Q. And sales off 1, what did he estimate they would run?

A. A wild guess at fifteen hundred, and fifteen hundred for labor and grading. That is three thousand other than the building.

Q. What I am getting at, the materials which you removed from that claim and sold, what did those——.

A. I am making a wild guess at fifteen hundred.

Q. Now, I will follow these claims up more or less as they show in Exhibit 1.

What about Claim No. 1? Now, what is the value of the improvements?

A. There you have, that would be a quarter of a mile across, and you have a full quarter of a mile of road all along below the highway. The development below that, which Mr. McClellan just quoted, the material he took out of there, the spring——

Q. How much value do you ascribe to the development work here?

A. What I did: there is also production there on the road alongside of it, there is a gravel pit that I——

Q. I want to find out what development work.

[Tr. 103] A. The gravel pit and the road.

Q. Well, let me ask you, how much value do you ascribe to the road on Claim 10 that you put in?

A. I will be conservative and say $1500.00 there.

Q. What other improvements on this claim?

A. I don't know whether you would class the work Mr. McClellan did as an improvement. It is production, partly done on 10 and partly on 1.

Q. The sales from 10 that you have made, what do they amount to?

A. Probably around fifteen hundred. I did a lot down there first.

Q. Going up further, Claim No. 15, what is the value of the development work on that claim?

A. I would say it would be a minimum of $4,000 for the development work on 5.

Q. What does that consist of?

A. That consists of a road to the length of, pretty close to two miles of road, a mile and three-quarters of road in No. 5, and a quarry face opened so that there is room for several trucks to park, and a skiploader to park. That is the sorting area that Mr. Sanborn was talking about, the first one I developed.

Q. How much material has been removed from that claim and sold?

[Tr. 104] A. I am guessing again, this is approximate; I would say 700 tons.

Q. What would that be?

A. That's all building stone.

Q. $12.00 a ton?

A. It varied, none less than that, some quite a bit more, depending on its quality.

Q. Would that be a fair average?

A. You can take that as an average if you want to.

Q. Would it be an unreasonable——

A. Not too unreasonable.

Q. We can say approximately then 700 tons at $12.00 per ton was from Claim 5?

A. Yes; that's rough.

Q. Going to the east, Claim 20, what improvements are on that claim; what is the value of them?

A. There you have again a road. You got more than a quarter of a mile of road and a gravel pit.

Q. You are referring to the road you put in?

A. Yes, below the main road.

Q. What is the value on that road?

A. If I took it at the same value as 10, it would be $1500 in road, and excavation and the gravel pit.

Q. Is it in fact worth that much?

A. It was about an equal proposition all along the shore [Tr. 105] below the road, was quite a deposit of rock from which I drew rock and I opened the gravel pit and produced concrete aggregate unwashed, made good concrete for my own building purposes, also sold small quantities.

Q. How much has been sold off Claim No. 20?

A. Oh, perhaps 400 yards over the years.

Q. Aggregate?

A. Yes, aggregate fill and so on, leach line. This was before Mr. McClellan come over there.

Q. That is at approximately how much per yard?

A. Between four and five dollars per yard for the aggregate, as I sold it.

Q. How did you put this road in that is shown on Claim 20?

A. With my own skiploader.

Q. How long did you take you to do that?

A. I can't even remember. It was torture. Weeks.

Q. Working every day?

A. You bet your hat, and blasting, full of big ones when I started.

Q. Getting back to the main body of the claims, 4, what development work is on that?

A. No. 4, part of it is the talus slope, and the note on the map that the road crosses that near the top. It isn't shown here—yes, it is. The roads on No. 1 reach into the [Tr. 106] bottom of the talus slope just a little ways.

I took building stone from the slope within No. 4 at the lower end.

Q. What I am trying to find out is what is the value of the development work on Claim No. 4?

A. I'd say it was maybe $750.00 in road there.

Q. And how much material has been taken off?

A. That again is a wild guess.

Q. What would the wild guess be?

A. I'd say maybe, I remember on one occasion I took $225 worth of flat patio paving material out of there in one order.

Q. Well, what is the total that you estimate?

A. I'd say $350, to be very conservative.

Q. Going up further to Claim 8, what is the value of those improvements?

A. The roads are not all shown on here. I have done much more since.

Q. When was the extra work done?

A. Oh, some last fall after Mr. Sanborn left, and a great deal this spring. Some of the pictures show the extra road.

Q. This was done subsequent to the time Mr. Sanborn was there?

A. Oh, yes, and he saw some of the termination of it when [Tr. 107] he was up there examining just a week ago. I had these pictures taken a week ago.

Q. What value do you ascribe to the roads that were on Claim No. 8 when Mr. Sanborn looked at the claim?

A. There you have, I would say there was a good $1500 in that road work. That was all heavy blasting, a lot of it, heavy work.

Q. How much rock has been sold off that claim, how much material of any kind has been sold?

A. It's all been rock, building stone up there. It is all ornamental, about 90 tons.

Q. About $12.00 average?

A. No, it's been more than that. Most have been more recent and the price was higher. I would say $15.00 average. I can dig the orders out.

Q. That would be about $1,350?

A. Yes.

Q. What about Claim No. 11?

A. Some of that road work shown on there was done by a competitor without my permission.

Q. You don't ascribe any value to that?

A. Yes. It has a value. However, most of the other work on there was merely location work and some brushing out at the upper end of it to hold that claim.

Q. How long did it take you to do that work?

[Tr. 108] A. Oh, the surveying was the biggest job, and pretty accurately located the whole place.

Q. Other than surveying how much work was involved?

A. Maybe a week, ten days.

Q. That was done by hand?

A. Oh, yes, sir, everything is hand work up there.

Q. And how much value per day would you put to that work?

A. I am going to let you value my time.

Q. I have no information.

A. I happen to be a pretty skilled workman or I never could have done this thing over ten years. My time is worth much more than a common laborer's, don't sell it as a common laborer's.

Q. $15.00 a day?

A. I think that might be not a bit too much. I take all the blasting risks and everything else without insurance.

Q. Now, is there any material that has been sold off Claim No. 11?

A. By my competitors, who freeloaded off it.

Q. Have you sold anything?

A. No.

Q. Claim No. 11, then, the value of the improvements approximate $150.00; that is ten days' work at $15.00.

A. We will say—

Q. Is that correct?

[Tr. 109] A. Yes.

Q. And no sales have been made off it?

A. No.

Q. What did you want to say?

A. The mining law clearly states that if the work on some of the claims is of benefit to all of the claims, it may be done on one of the claims if the claims are adjacent.

Now, in that respect I was steadily advancing road all over the mountain to reach the top and bench off, and the roads which were leading toward 11, as you see them, pointing down from 9, are that adjacent work there, because there is an area there where you can drive all around there.

Q. 11 is accessible to the main highway?

A. The bottom, that part is pretty sheer cliffs and will be very dangerous to work from.

Q. We still have some claims to go.

Now, Claim No. 9, what work is done there in the way of development work?

A. The same thing, temporary roads and some small amount of work. You could put the value of the work at, oh, say $150.00, the same, the time expended.

Q. Nothing has been sold off it?

A. Except some wood. I cut dead wood to clear it of hazard.

Q. Any stone?

A. No.

[Tr. 110] Q. Claim No. 6, what is the value of the improvements there?

A. Six and 7,——

Q. Just 6.

A. You have the same thing, except that I did pick up some surface rock there and roughly cleared the ground to get room.

Q. What value do you ascribe to the development work on 6?

A. In surveying considered as development work?

Q. Let's separate it from the other work.

A. You asked me for the values.

Q. We will leave out the surveying for the moment. What is the remaining work worth?

A. You could say the same thing there, about $150.00.

Q. How much material has been removed from it?

A. Oh, maybe 20 tons altogether.

Q. $12.00?

A. $12.00.

Q. And now Claim No. 7?

A. On that there is quite a bit of hard road work that is part of the switchbacks up the mountain. In it are included two large switchbacks. I would say $1500.00 might cover that.

Q. Development work?

[Tr. 111] A. Roughly.

Q. Any material been removed from it?

A. Yes. In fact, all along those roads whenever I blasted off material, I piled it and loaded it and later sold the partially filled orders with it. It was salable goods.

Q. What was it sold as?

A. Building stone.

Q. Did you remove any rock from there other than what you produced during the course of building roads?

A. Yes. There are spots all along the road where, at times, where I or I and customers would go up, and they would want to pick their own, see what they liked. We would load it up, take it away.

Q. What can you estimate was the value of this material removed from 7?

A. Well, you are asking me for a lot of wild guesses, and I don't know what they would add up to, but I—I have 22 sales books to show.

Q. Have you any idea what tonnage was involved?

A. I told you before. It is very hard to estimate that. I worked all over the place, not in one spot, and aggregated together. You are asking me for something that is hard to give you.

Q. One of the points that the Government has in mind is that you are asking for patents on just about a square mile of [Tr. 112] national forest, and yet you seem to have no information, as to large areas there, as to the values.

A. I have total information, but not broken-down information.

Here are 22 sales books as evidence right here.

Q. You don't know now, is that correct?

A. No. It could be broken down, perhaps, but I would have to do a lot of thinking.

Q. Can you make no estimate of the value of the materials from 7?

A. Again, it is only a wild guess. There has been a lot taken out of the switchbacks in digging there. I am making only wild guesses, say 40 or 50 ton.

Q. $12.00 a ton?

A. Say that. I kept no track what came out of which particular section.

Q. Mr. Sanborn says he doesn't see any switchbacks.

A. Excuse me. I am looking at No. 4. No. 7 is the one we talked of last. It doesn't have switchbacks. I picked up some tonnage from——

Q. What is the value of the improvements on 7?

A. No. 7 was the one I stated above the talus that had——

Q. Claim 7, not Section 7.

A. 7 was mostly picking up and clearing road across, and I did shoot a little out of——

[Tr. 113] Q. What would the value of that be?

A. Barring surveying, might be $200.00. Those are approximate, mind you.

Q. What material has been removed from 7, if any?

A. Oh, several miscellaneous loads, particularly of landscape rock, which I sold at $17.50 a ton, ornamental rock.

Q. How many tons would that amount to?

A. Maybe three, five ton loads.

Q. Fifteen tons altogether?

A. At seventeen-fifty, plus my labor there, different times.

Q. About $250.00?

A. Something like that.

Q. Now, the rest of the claims look, according to Exhibit 1, as though substantially there was no work on them.

A. The work was in brushing out roads as exhibited in one of those photographs.

Q. Now, on any of the remaining claims is the development work more than a hundred dollars, on any one claim?

A. I would say in time and effort it was at least that. It takes a long time to even get up there. At first it took a lot longer than it takes now.

Q. Would the work on any of these remaining claims be as much as $150.00 in value?

A. I would say between $100 and $150 in effort.

[Tr. 114] Q. That is true of all of the claims we haven't talked about so far, is that right?

A. I think that could be roughly so; 9, 12, 13, 19, 17 and 14.

Q. That is all your western claims?

A. Yes.

Q. Has any material been sold off any of them?

A. From 12, yes, moderate quantity.

Q. How much?

A. Oh, maybe 10, 15 tons, something like that.

Q. How much, $12.00?

A. You could say that now because I'd have to look at the records.

Q. Do you know when the sale was made?

A. No.

Q. What about the remaining claims then, anything off them?

A. The same occurs there. It was just a case of going in there, brushing out.

Q. You have already told me, Mr. Coleman, that the value of the improvements in the remaining claims, on any of them, is somewhere between $100 and $150.

I am asking as to these remaining claims, have any sales been made off them?

A. Yes, small sales because every time I came down off [Tr. 115] the hill, if I had a truck, I brought rock with me. I didn't go up there wastefully. It was put in a stockpile and eventually marketed with the other rock.

Q. What would the total amount be?

A. Off each one.

Q. Yes.

A. There again how can I remember that now, years later? The last couple years I have been working on the big jobs.

Q. Well, would it be fair to say that a small amount has been removed from each claim?

A. I would say that, yes, except I would say this, that I have not carried any rock off of 14 and 18 and 19 and 17.

Q. That leaves 16.

A. I filed location, when I had a vehicle, I took it around with me——

Q. What about 16?

A. 16, rock was taken from down near the highway.

Q. How much of that?

A. And 15.

Q. How much in each case would you estimate?

A. Quite a bit off of 15, maybe five or ten tons; maybe ten tons off of 16 at different times.

Q. And 13?

A. A little was taken off of 13.

Q. What is that, five tons?

[Tr. 116] A. Call it that if you want to, because the figures are too wild.

Q. How was it taken off of 13?

A. Skiploader and the rack on the back, always bring rock down.

Q. Is there a road on 13?

A. The lower corner of 13, it is down here on the corner of 12; you go right through the woods. I have taken a lot of wood from there.

Q. Now, can you estimate—You have been doing this work for what, 10 years, about?

A. It would be 10 years next February that I filed on the original claim, February 19th.

Q. How much days each year would you estimate that you have been working?

A. Pretty close to 365.

Q. Each year?

A. Yes, pretty close to it. There hasn't been a day except when my wife was sick that I haven't been on that place.

Q. If we said 300?

A. That would be very conservative. I have had no vacations through all this time.

Q. 3,000 days of work involved?

A. Yes.

Q. How long do each of these days represent in hours, [Tr. 117] approximately, on the average?

A. From 12 to 18.

Q. That is 3,000 man days and at least 10 hours; that would be 30,000 hours, is that right?

A. That's right.

Q. 45,000 hours of work, is that correct?

A. That's right.

Q. Would you give to your work value of $2.00 an hour?

A. You better give it more than that, with the risks I took and the headaches. Give it that if you want to. I don't care what you give it.

Q. I am asking you what would be the fair value. I am not giving it. If you think it is wrong, say so. But would you consider that $2.00 an hour is average for the—You say it is wrong?

A. It is wrong.

Q. What should it be?

A. I am a mechanic, I am a power man, I am a surveyor, everything on the place. $2.00 an hour, a price for that kind of skill?

Q. I don't know.

A. You try and hire it and you will know quick.

Q. Could I call it $2.50 an hour?

lake, and went to legal survey markers, ran lines out across the lake and up the mountain to be sure where I was. Some of the initial surveyings, I was assisted a little by the then ranger, Mr. Slattery.

Q. Did you mark the corners of the claim on the ground; your claims on the ground as you surveyed this area?

A. No. I marked the—some of the main corners, simply ran the line down. I wrote to the Forest Service and requested that they in conjunction establish some particular point they considered a starting point that we would both agree on, so that when I did set boundaries they wouldn't be disputed.

They said that was not within their jurisdiction and they couldn't assist me in any way in locating my claims.

So I simply went ahead myself, to the best of my ability. I also wrote them and stated I could see no point at that time in marking corners or quibbling about a few feet one side or the other, as I didn't intend to fence it or do any construction on the line until I acquired title.

Q. What did you do with your surveying other than to locate the corners?

A. Well, the idea was to amend any locations that were [Tr. 125] originally made so that they would conform to legal subdivision as required by law, which I did.

Q. You found out where your claims lay?

A. Yes.

Q. Now, have you estimated the total quantity of quartzite on the various claims?

A. Only from this same report which you have here, 31, which states that the deposit is approximately a thousand feet thick, and knowing the approximate area of the claims I sat down one day with a pencil and came up with a tremendous figure, which may or may not be accurate.

Q. How long would you expect the quantity of quartzite on the claims to meet the market demand?

A. That is very hard to say, because every commercial,—they find entirely new uses every little while; for instance, you can take borax, which was originally a hand soap, and is now a fuel. And I have knowledge of some which I don't propose to talk about, because it is futile, which may some day make it valuable for other purposes than those we see now.

Q. Meanwhile, the sales over the period of ten years have approximated 2,000 tons; that is right, isn't it?

A. You might say that.

Q. Well, isn't it true that there was enough quartzite on these various claims to last well over, say, 500 years?

A. At that basis, yes. But that is not a good basis to operate a continuous business on with a number of employees. [Tr. 126] You certainly couldn't feed many people from that.

Q. Judging from your present rate of disposition of the quartzite, that would be true?

A. It would be true from my personal disposition of it, which isn't what I was aiming at. I know I can't produce much longer.

Q. Isn't it also true that the quartzite on a single claim would be sufficient to satisfy that demand at the present rate for a good many years?

A. No. I don't think I could have even done the business I did off a single claim, because people select different types of material for different types of ornamentation.

Q. Quantitative, the quartzite in a single claim would be sufficient?

A. The quantity might be all right, but the quality would not be all right, so it wouldn't be salable to everyone.

Q. Now, you have sold quartzite through the years as a building stone, is that right?

A. Mainly as a building material, because I could market readily the unprocessed while I was pioneering.

Q. What do you mean?

A. Leach line rock and some fill material and some building stone, some veneer, some slab, fireplace chunks, sort it out.

Q. About what proportion of it has been for its [Tr. 127] ornamental qualities?

A. That I sold, probably 80 percent.

Q. And the rest has been——

A. For other building uses.

Q. Such as, for example, leach line?

A. Yes, fill block and so on.

Q. Now, have you made sales of any materials other than this quartzite rock and the lumber you mentioned?

A. Just the wood.

Q. Did you sell any material besides that?

A. No.

Q. Until recently?

A. No, except this material that Mr. McClellan mentioned.

Q. That has been the only sale of sand and gravel and that sort of thing?

A. That's all.

Q. That has been in the last four months?

A. Yes.

Q. So that since 1946 nothing—or prior to 1956? nothing but the quartzite was sold?

A. That's right. The whole operation was for that purpose.

Mr. Lawrence: I can't think of any other questions, Mr. Coleman.

Hearing Officer Wood: Have you anything else, Mr. Coleman?

[Tr. 128] Mr. Coleman: I can only stress that the reason for not doing a great deal of work on the back claims up to the present was that I am simply extending toward them slowly with the roads and have gotten up high enough so that I can bench off safely in the areas I am working now, and I feel the same about those back claims as I imagine the law states in regard to Kaiser with his Dellenite or someone else with limestone.

They file sufficient to last a long time and develop. They don't immediately go out and excavate from every one. They gradually develop them as they are needed or there is call, and in order to justify a large investment in money and machinery, and think of a long-term project; there had to be a [sic] enough equity to say that anyone who wanted to back up my effort would feel that they had some security, and they have no security so long as I don't have clear title to the equities that I have built.

I am trying to clear the title to the labor I put forth so that I can then combine it with someone else's and develop into a legitimate enterprise.

The potential is there, but not for one man to do alone. However, someone had to have the vision to pioneer it, and that's what I have done.

And there are other claimants on the same mountain, and, as you said, plenty of quartzite on the other side and

[Tr. 129] other places. I am not attempting any monopoly. I simply took the land which was workable adjacent to the land I had to start the work on.

By Mr. Lawrence:

Q. Do you recall having written some time ago, I believe, the Forest Service, Mr. Coleman, to the effect that it would be essential that a patent be granted to all of these claims, rather than just a few of them, because if a patent were given, say, to only four of these claims, someone else might sell the other material, and that would depress the market; do you recall writing anything to that effect?

A. Well, I don't know just how I expressed it. I pointed out, to have the neighbors reaching in on all sides of me would make it much more difficult if I only had a small equity; to go ahead and develop. I had to have sufficient equity and space.

In so doing, when I filed on these claims, I looked carefully at the map and all around the surrounding mountains, where anybody had performed any labor. I filed around my legal subdivision and left them alone, knowing they had the same chance I had, and there is plenty more on that mountain if they want to go ahead and develop it as I did, but they don't, or haven't.

Q. Suppose that you were given a patent to these southeastern claims, say, 1, 4, 5 and 10?

[Tr. 130] A. Exclude my residence and one of my—1, 4, 5 and 10?

Q. You see what I am referring to?

A. Yes.

Q. Suppose a patent were granted to you for those four claims and the remaining claims were held to be invalid, so that somebody else could move in on them; would that have any effect on the marketability of the material on these four claims?

A. It would have this effect right off the bat; you haven't included 8, upon which I have done a great deal of recent work. It is in the photographs there, and there are different qualities of quartzite on the different claims. I would be excluded from some of the work I had already done on the material I had already marketed, already in use. I couldn't duplicate it.

A. No, you couldn't. I wouldn't sell it to anybody for less than three and a half, even if I had a long-term contract, [Tr. 118] the work that I have done.

Q. Well, would it be incorrect then to say that the value of your work is at least $157,500.00?

A. That's right. I will never get it but—I'll tell you why it is, if you want to know.

Q. Go ahead.

A. Do you?

Q. I am moderately interested.

A. At the end of World War II, I was sent out on the street to pound the pavements, because I had a disability, and the politicians said merchant seamen were not veterans.

After being decorated five times in fighting a war, for five years, I had to make a living. So I had to do something that would create an estate, and it couldn't be created out of ordinary wages. It had to be created out of natural resources.

So I have been working to develop the natural resources that would feed my wife the rest of our lives. That's why I did it.

Q. Well, did you earlier advise Mr. Sanborn when he came to examine these claims what the total sales amounted to as of that time?

A. I did. I showed him all of these sales books right here.

Q. What was that?

[Tr. 119] A. I didn't total them at the time.

Q. He testified earlier, as I recall, it was about a thousand tons sold over eight or ten years. You heard him testify?

A. I heard him testify.

Q. Was that incorrect?

A. I couldn't say whether it is correct. I think it is very much minimized.

Q. What figure would you think it might be?

A. That I can't say either, until I go through all the records. They are here. If someone wants to look through them, or if I have to, I will.

Q. You don't have the figures?

A. Not the totals.

Q. Would it be twice as much as Mr. Sanborn stated?

A. It possibly could.

Q. 2,000 tons?

A. Yes. Someone—Some would be sold at a lesser amount, some more, very fluctuating. I was just struggling to create this thing.

Q. 2,000 tons at $12.00 a ton wouldn't be grossly erroneous, would it?

A. I wouldn't say it was too far off, although I can't say until we go through this thing, if you have to do it.

Q. Does it follow then that you have devoted $157,500.00 [Tr. 120] worth of effort and produced materials having a market value of approximately $24,000?

A. Possibly so. It is all pioneering.

Q. Would it be a fair conclusion that most of the value of what you sold was your effort in producing it?

A. To start with, yes.

Q. Throughout all the years?

A. To create an equity in the property.

Q. The value added to these—to your effort by the rock was very little——

A. The rock I sold.

Q. The greatest value was the work you put in, is that correct?

A. The potential value to be derived if I won the title to the property; potential value is what I was striving for. I certainly wouldn't work that way to eat.

Q. Today, it followed that as a result of ten years of effort, you have lost——

A. I have invested; I haven't lost yet.

Q. You have recovered only a small fraction of the value that you put in, is that right?

A. That's right. I recovered only a small fraction of what I put in.

Q. Now, what did the total sales for the last year of building stone amount to, do you recall?

[Tr. 121] A. I haven't totalled that up. I have something near it, I guess. There were no sales till June.

In regard to Mr. Sanborn's statement that there haven't been many sales recently, that was planned. It wasn't something that just happened.

We sold our home in San Pedro last spring, when I saw that our livelihood and future and everything we had developed on this place—and moved up here—I knew in order to get this organized I couldn't be out doing a dozen things all at once, so I took only what business knocked at the door.

I did no advertising or outside selling, so that those sales are no criterion of what can be done, if I advertised. I know that when I advertise or try to advertise, as Mr. Burman is doing, I can create interest, the same interest that he created in Arizona flagstone. But I have not done that until I was able to deliver, I knew I had title to my equity.

I would be foolish to advertise something and then have it taken out from under me.

Q. Is there on Claim No. 1 sufficient quartzite, that is, enough in volume to meet all the sales that you have made to date?

A. No, there isn't on any single one claim. There might be volume but not quality. That's the point. There is various qualities on different claims. Different customers want different things, just as Mr. Burman said about stone. As for [Tr. 122] quantity——

Q. Now, what about this quartzite across the valley on the other side of the lake? There is a great deal of it over there.

A. I have never climbed that mountain to see if it was the same quality or anything else, except I know there are no good access roads or development of it at the present time. I think it is the same continuation of the same deposit.

Is that so, Mr. Nicholas, do you know?

Hearing Officer Wood: May I interrupt for just a moment here? If you are going to consume any great length of time, we will take a ten-minute recess.

Mr. Lawrence: Yes. I think I will probably have some more.

Hearing Officer Wood: Let's take a ten-minute recess.

(Recess.)

Hearing Officer Wood: On the record.
You are still on the stand, Mr. Coleman.

By Mr. Lawrence:

Q. I was asking you, Mr. Coleman, you may recall, about the quartzite located east of your claims across Baldwin Lake. I don't know if I heard your answer or not. You say you had not been up there?

A. I have never climbed up on that mountain. I have been along a road on a portion of the base, seen a little quartzite on the ground, but as to the total quantity, all I can say is, [Tr. 123] in looking at it from the front of our place, there is a lot up there. What it is like, I don't know. There is a lot up there.

Q. As far as you know, it might be equally good for the purposes to which you put your rock, as your rock is?

A. It could be and it could not be. I can't make an estimate. You got to get close to it.

Q. Now, you talked about surveys a little while back. What was the purpose of the surveying, to locate your corners?

A. I took all of the claims by legal subdivision in such wise that it would be adjacent, because the ground is so rough, there is a very gradual process. I had to do it single-handed. I had to site, and any fellow that has ever done that on the mountains—steer by compass and lay out lines; I did it very thoroughly over a long period of time, got all the information I could get from every source I could find. I was pretty sure that I was right when I got through.

Q. The purpose of your surveying was to ascertain where your claims were?

A. That's right.

Q. Did the surveying develop the claims in any other way?

A. Yes, it showed me where roads could be built.

Q. In terms of legal subdivisions?

A. And also in terms of pitch of the terrain.

Q. What kind of survey would that be?

A. I have a transit which probably cost five, six, seven hundred dollars new. I have it up there, and I went [Tr. 124] first to the county records. Then I also went to the Forest Service records and got information on the original survey notes in the Forest Service records.

I ran down their markers, went all the way across the

Q. Let's suppose 8 were included in the claims patented then: Would the fact that other people would be free to develop the remaining claims have any effect?

A. Yes. Mr. Sanborn knows that up in 13, 17, and in that area, and 14, particularly, there is rock that is different and very marketable, as compared to the rock I have here that I have marketed very little of yet, but I am extending road to it. It is different.

Q. Would the fact that someone else might be able to [Tr. 131] develop sales of that have any effect on your sales from the five claims?

A. Yes. It would offer very strong competition to the thing that I am doing already and to the work I have already done to hold those claims, which no one else ever did.

Q. Well, would that perhaps destroy the values in these five claims?

A. It would reduce them. I wouldn't say it would destroy them; it would reduce them.

Q. That is because there would be competition?

A. Also because in someone else's hands they would have a choice of material that I could not then provide. I want to give people a choice of materials of the type that I am marketing, quartzite.

Q. Would it be fair to say that a large part of the values attributed to these five claims would be contingent upon your having all of the claims?

A. Yes, for two reasons, both because of the difference in material and the fact that I would have much less equity to offer anyone as collateral to expand the enterprise, two good reasons.

Q. And it would be harder also to sell for the same price?

A. That's right. There is another one.

Mr. Lawrence: That's all. I have nothing more, Mr. Examiner.

(Witness excused.)

[Tr. 132] Hearing Officer Wood: No rebuttal or anything? You have nothing further, Mr. Coleman?

Mr. Coleman: Except to repeat that there are a number of people already who have been there longer than I have and have had ample opportunity to expand or develop or do anything they want to, and they still have, without interfering with that which I have already done, if they will.

There is no monopoly; there never has been. There can be none.

Hearing Officer Wood: Mr. Coleman, the law provides that at the end of the hearing I give each party sufficient amount of time, if they so desire, within which to submit to the Examiner proposed findings of fact and conclusions of law, and reasons in support thereof, unless it is waived. If the submission of such inclusions of fact is waived, it is incumbent upon the Examiner in his decision as promptly as possible after the time allowed to present his decision, which shall state the conclusions of law and the findings of fact.

Your not being an attorney, I am explaining it more than I would to Mr. Lawrence.

I merely ask him if he desires to waive that provision. Mr. Lawrence, I now ask you, do you desire——

Mr. Lawrence: I will waive any rights.

Hearing Officer Wood: And, Mr. Coleman, you have the [Tr. 133] same right. I am not sure that you understand what I mean.

Mr. Coleman: Does that mean I still have the right of appeal?

Hearing Officer Wood: Yes, you will have the right of appeal, over and beyond that; what I am asking you now, if you want 15 days to put in writing conclusions of law, findings of fact, and citations of cases, and calling my attention to what I should write in my decision, of which I need pay no attention if I so desire, or I may accept it.

Mr. Coleman: If it seems the truth, and evidence. I think that perhaps it would be wise for me to do that, because I am inexperienced at that, and I can think it over; and maybe there are some things I have overlooked; if it is not objectionable to you, I would like to take the time.

Hearing Officer Wood: Are you then stating that you do want 15 days?

Mr. Coleman: Yes.

Hearing Officer Wood: You understand what I want?

Mr. Coleman: If I have any other facts to submit.

Hearing Officer Wood: No new evidence, I don't want. I want you to tell me what I should write in my decision, what the law is. I want you to tell me the conclusions that you have reached from the facts as presented in this hearing here; and cite your reasons thereof, citing court cases or whatever you may find in support of your statement.

[Tr. 134] Mr. Coleman: That is what I would like the opportunity to do.

Hearing Officer Wood: All right. You may have 15 days from today within which to submit those proposed findings of fact to me.

Mr. Lawrence, in view of the fact that he is given 15 days, do you desire an additional amount of time?

Mr. Lawrence: I would like permission to reply, say, 10 days.

Hearing Officer Wood: If the conclusions of fact are submitted, then you may have ten days within which to reply.

There being no further testimony, let the record show that the hearing is closed.

(Whereupon, at 4:20 o'clock p.m., Tuesday, September 16, 1958, the hearing in the above-entitled matter was closed.)

Decision—December 18, 1958

Baldwin Lake Quarry Claims No. 1, 4, 5, 8, and 10 Declared Valid. Balance of Claims Declared Null and Void and Patent Application Denied.

I

The above-captioned contest action was initiated through the filing of a complaint by the named contestant and service thereof upon the contestees, in conformity with the Department of the Interior Rules of Practice (43 CFR, Part 221), and answer thereto having been made and duly served by the contestees denying the charges and requesting a hearing. The contestant specifically charges and alleges as follows:

(a) The lands embraced within the claims are nonmineral in character.

(b) Minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery.

(c) $500.00 has not been expended on Baldwin Lake Quarry Claims No. 7, 9, 11 to 19, inclusive.

Notice of the charges was properly served upon the contestees, as evidenced by return receipts dated March 7, 1958. The issue having been joined the parties were directed to appear at a hearing before a Hearing Examiner on September 16, 1958, as evidenced by return receipt dated August 7, 1958.

At the time and place designated for the hearing there appeared for and on behalf of the contestant Mr. Charles F. Lawrence, Office of the General Counsel, Departmenet of Agriculture, and Alfred and Edna W. Coleman appeared on their own behalf. After both parties were informed of the charges and the nature of the proceeding, the burden of proof and the evidence required to refute the charges, the hearing proceeded.

II

Mr. William C. Sanborn, mining engineer, testified on behalf of the contestant in substance that he first examined the claims on October 7, 8, 9, and 10, 1957, and again on September 11, 14, and 15, 1958, and that on the occasion of his first visit in 1957 Mr. Coleman, the contestee, accompanied him and pointed out the location monuments, the land corners, the section corners common to Sections 6 and 7, T. 2 N., R. 2 E., and Sections 1 and 12, T. 2 N., R. 1 E. He likewise described the manner and method in which his map had been prepared and pointed out areas from which he had produced rock and had removed gravelly fractions.

Mr. Sanborn then described the topography of the area, assigning an elevation from 6900 to 8000 feet to the area of the claims in question. Mr. Sanborn then described the geology of the area as containing three distinct elements, massive rock outcrops, erosional material extending downslope from the rock outcrops and grading into fine fractions at the base of the ridge and slopes.

Mr. Sanborn testified that the quartzite rock which is common throughout all the claims involved is gray in color and thick bedded in its characteristics, and that it weathers out on the surface to pinks, and in areas where the original beds contain more iron the oxidation of that causes the rock to become red on the outside surface, and that there are two talus slopes extending down the ridge within the limits of the claims, namely in Claims No. 1 and 4 and in Claims No. 13 and 14, and that there are larger talus-slopes, more extensive, lying outside the claims to the north and to the west.

Mr. Sanborn testified that the claims are in an arid region in which it is normal for the forces of erosion to be primarily mechanical distintegration rather than chemical weathering, and that the fine fractions that are removed in this process are washed downslope from the rock outcrops, leaving rather porous, course, accumulation of material on the uppermost portions of the talus cones.

Mr. Sanborn then testified that he had taken a number of pictures on the claims (Exhibits No. 4-13) and some of these photographs will express more clearly the statements that the material underneath the surface grades into soil fractions in which masses of angular quartzite rock predominates, and that Exhibit No. 6 shows the massive character of the quartzite beds comprising the rock outcrops lying within the limits of the claim, that here the rocks are large in size, the relative nature of which can be somewhat determined by the man standing in the central part of the picture on a large rock.

Mr. Sanborn testified that the principal value attached to the material of rock occurring within these claims was stated by the contestee as being for building purposes.

Mr. Sanborn then described the quartzite rock within the limits of the claims as being massive bedded materials and that this quartzite is a rock of varying chemical composition, which is essentially a cemented sandstone, wherein the cementing has developed to the extent or degree that the rock is so homogeneous that fracturing of it is across the grain and through the cementing materials surrounding the grains, which distinguishes quartzite from sandstone, sandstone being of less indurated character, so that upon breakage the fracturing takes place around the grain of sand whereas quartzite fractures across or through the grains. Mr. Sanborn testified that on these claims the quartzite is in massive beds and for that reason the rocks take a variety of shapes and as a result there is only a limited portion of the products of distintegration which is suitable for use in rock work, the bulk of the material falling in the category of rubble.

Mr. Sanborn testified that to his knowledge for many years the quartzite on Gold Mountain ridges has been used locally and to some extent at somewhat distant points from the area for fireplaces, rock walls, and to a very limited extent for veneer-type of construction, and that he has examined the sales receipts, which Mr. Coleman made available to him, which indicate that numerous small sales have been made over a number of years and that the patent application itself indicates that some thousand tons were disposed of from the claims since 1949 and averaged $12.00 a ton. Mr. Sanborn testified that he has examined the sales receipts for 1957 from January until the date of his examination in October and that they show some 52 tons of quartzite rock have been disposed of on a weight basis and 515 square feet of material had been disposed of on a footage basis, that the value of those particular sales in 1957 amounted to $1025.00.

Mr. Sanborn then testified as to the improvements which he found upon the claims and that outside of the road improvements he attached a value of $1800.00 to the house on Claim No. 1 and $1800.00 to the equipment, but that the equipment was portable.

Mr. Sanborn testified that he was satisfied from his examination of the claims that some 100 to 150 tons of material per year had been removed, that most of this had been removed from Claim No. 4 and that he attributes the balance of the material as being taken from Claims No. 1, 5, and 8.

Mr. Sanborn testified that he had taken a picture (Exhibit No. 14) of a grizzley which had been installed in Claim No. 4, which had a crusher, conveyor belt, and vibrating screens which in effect classified the material into three or four products. (Note: This machinery is owned by Edward J. McClellan, lessee (Tr-93).)

Mr. Sanborn then described three additional photographs which he had taken of the claims which show generally the type of road construction within the claims (Exhibits No. 15, 16, and 17) and described these roads as [capable of] being put in by bulldozer operations.

Mr. Sanborn described the quarrying being presently carried on within the western part of Claim No. 8 as shown in Exhibit No. 18 and also shows the angular character of the material and the comparative size of the rock.

Mr. Sanborn then testified that he investigated the possible market for the material that occurs generally within the limits of the claims, in San Bernardino, Riverside, and the Los Angeles area, and that he was satisfied that a market for such material is very limited for reasons of its difficulty in working, its lack of adaptability to mass construction processes, and its weight, that the rock is extremely tough and it does not shape with ease, that it breaks in a way that is most unpredictable, that the amount of material that could be used for flag or veneering comprises an extremely small portion of the material occurring within the limits of the claims, and that generally the sales of the material were sporadic and on a do-it-yourself type of activity rather than a use in connection with contractors in the business of producing homes.

Mr. Sanborn further testified that the unit area facing per ton of this material is very low compared with rock which is more uniform, more susceptible to sizing and shaping into material that is easily laid up, that on an average this material will cover 25 square feet of surfacing as compared with diamond spring rock, which is sold in the

Redlands area, which has a coverage of 60 square feet per ton. It should also be noted that Arizona flagstone averages more than 100 square feet coverage per ton.

Mr. Sanborn testified that it is obvious that the weight and shape have a great deal to do with limiting the use of this material for it cannot be stressed too strongly that it is rough, indestructable rock and when you attempt to break it, it breaks into pieces that are smaller than what is suitable or adaptable to heavy rock wall work and that the pieces have no particular value unless crushed as a coarse aggregate.

Mr. Sanborn then testified that he had reviewed California Division of Mines' Special Report No. 31 which is devoted to the geology of the Johnston Grade Area and shows the extent of this particular quartzite which is designated in that particular publication as saragossa quartzite and indicates that it is very extensively occurring material extending north, east, and south of the area involved within the limits of these 18 claims, comprising perhaps 1/40th or less of the area mapped as saragossa quartzite.

Mr. Sanborn then testified that from his examination of the claims involved, his consideration of the sales receipts and the record of sales and from the value of sales made during the period of ownership of these particular claims, and from his investigation of the market potential, he was of the opinion that no appreciable increase could be expected in the sales or outgo of this material, and as indicated by the sales receipts he does not believe that the income derived directly from the disposal of this quartzite, which he believes will become more difficult to produce as the more usable fractions are sorted out, would cause a prudent man to spend his time and money with a reasonable chance of success.

The cross-examination of Mr. Sanborn by Mr. Coleman was devoted to the construction of the roads and the improvements upon the claims.

III

Mr. John A. Burman, Southern Division Manager of Western States Stone Company, testified on behalf of the contestant in substance that the Western States Stone Company is primarily a marketer, producer, and distributor of natural stone products, that the Company has been in existence since 1948, and that they handle natural stone that is marketable, that the Western States Stone Company is the largest company of its kind west of the Mississippi River and that they estimate that this year they will do somewhere in the neighborhood of between two and one-quarter and two and one-half million dollars gross business. Mr. Burman testified that he was familiar with the rock primarily off of Mr. Coleman's claims and that he had been over the claims shortly after World War II with Mr. Coleman with the intention of handling the rock through his company at that particular time. Mr. Burman testified that at that time there was some activity on Big Bear Stone and that where there is a market for it they are always interested in it, and as he recalled there were a few hundred tons used at that particular time and that his company inventoried it in their Los Angeles yards. Mr. Burman testified that with respect to the rock on the Colemans' claims they have not had any in their yard for about two years, that the reason is that the requirements that call for that particular material have not materialized and they have not had enough call for it.

Mr. Burman testified that between five and six months ago they had a call for some of the stone in the Long Beach area and that that was the last call they had. Mr. Burman testified that he found in dealing with the different masonry contractors they have an aversion to this type of stone because it dulls their tools and they do not like to work with it—it is harder and they would rather use something softer and that there are a lot of softer stones on the market—that the most predominant stones on the market in the Los Angeles area, in particular, is limestone and sandstone.

Mr. Burman testified that he estimated that the Los Angeles area and shipping points within a distance of 300 or 400 miles would use somewhere in excess of 5,000 tons of all types of stone per month and that presently so far as he knows none of the stone on the Colemans' claims is presently being sold in that market, that of the four major wholesalers in the Los Angeles area, three of them have told him that they have not sold any of the Coleman-type stone within the last year.

Mr. Burman testified that the stone on Mr. Coleman's claims is adaptable to mass construction techniques and it is a lot harder and is harder to work. Mr. Burman testified that the market in so far as stone is concerned goes in cycles, that the stones that are now enjoying the most popularity as far as tonnage being used is concerned are the stones of natural colors, such as the Palos Verdes stone, and the stone that is called Driftwood, which is coming out of the Blythe area.

Mr. Burman then testified that the Coleman-stone was a very good material but that it does not seem to enjoy much popularity in the Los Angeles area.

IV

Mr. Alfred Coleman testified in his own behalf in substance that he had a letter from Mr. Quayle, Bank Manager at Big Bear, which showed the appraisal value of the labor on the road (Exhibit A). Mr. Coleman testified that he had an insurance policy upon the building and its contents for $8,825.00, and that aside from these improvements there is a sewage system and septic tank developed on the place and a power plant, and the amount of his labor expended over a period of years which would be more than enough to cover 30 claims at $500.00 per claim for improvements whereas he only has 18 claims.

Mr. Coleman testified that he had a letter of certification from the City of Los Angeles, approving this material for use in accordance with Section 24 of the Building Code, good until 1961 (this is a special permit—copy in case file), and that there is similar approval from the County of San Bernardino for use in San Bernardino County.

Mr. Coleman testified that as the material was classified the smaller material would wind up with sifted top soil or fines and sell at an extra price per ton or yard as the actual rock does and that there is nothing wasted. Mr. Coleman testified that he was presently quoting $15.00 a ton for quarry run, broken rock and that if he has a call for sized material that he quotes only by the square foot. Mr. Coleman testified that there are several classifications of quartzite on the claims and that they all have a use and value, and that the lowest price for anything taken out in the way of building materials is around $15.00 a ton, and that sometimes it is very rough and easier to get and a lower price is quoted, that prices are quoted by the square foot depending upon how valuable the labor may be and what the customer agrees upon, that his rock is not like Arizona flagstone which comes out in uniform slabs, that he does some classifying and sorting and splitting to produce it and that there has never been too good a sale, not because the rock is not good but because he has not advertised, that there is no lack of market, that the lack is in selling effort and that he felt that it was not wise to sell past his capacity to deliver without reaching delivery capacity first.

On cross-examination Mr. Coleman stated that a large area was claimed in order that access could be made to all of the claims, that they were all located because of the quartzite on them and because of the necessity for having enough to justify a long-term operation.

In reviewing the claims one by one, Mr. Coleman stated that on the No. 1 Claim are the house and other buildings and the area is leveled, and that he has a development journal in which he noted down things that he did and the history of all of the claims, and that there are 228 items of work and expenditures roughly noted in this development journal, that in order to determine the amount of work on each claim he would have to go through the entire journal and that would be quite a job over a period of 10 years.

Mr. Coleman stated that he would estimate he sold $1500.00 worth of material off of Claim No. 1, also he estimates approximately $1500.00 of material off of Claim No. 10, and approximately $8000.00 off of Claim No. 5. Mr. Coleman stated that on Claim No. 20 he opened the gravel pit and produced concrete aggregate unwashed for his own building purposes and that he also sold a small quantity from this claim, that he estimates that he sold $350.00 worth of material from Claim No. 4, that he sold approximately 90 tons of material at an average of $12.00 per ton from Claim No. 8, that nothing has been sold from Claim No. 11, that he has sold nothing except some wood off of Claim No. 9, that he has sold approximately 20 tons at $12.00 per ton from Claim No. 6, and that he estimates approximately $200.00 worth of material sold off of Claim No. 7 which was taken out when he was building the roads. Mr. Coleman stated that he has made small sales from the rest of the claims because everytime he came down off of the hill, if he had a truck, he brought rock with him which was stockpiled and eventually marketed with other rock, that he has not carried any rock off of Claims No. 14, 17, 18, and 19, that he has taken maybe 5 or 10 tons off of Claim No. 15 at different times and the same amount off of Claims No. 12 and 16, and that there has been about 5 tons taken off of Claim No. 13.

Mr. Coleman stated that there are only brushed-out roads on the upper claims. Mr. Coleman then stated that there was not a sufficient volume of material on Claim No. 1 to meet all of the sales that he has made to date, that there are various qualities on different claims, that he estimated the quantity of material on his claims from Special Report No. 31 which states that the deposit is approximately 1000 feet thick and knowing the approximate area of his claims he came up with a tremendous figure which may or may not be accurate.

Mr. Coleman stated that he filed on sufficient lands to last a long time to develop in order to justify a large investment in money and machinery, and think of a long-term project; there had to be enough equity to say that anyone who wanted to back up his effort would feel that they had some security, and they have no security so long as he does not have clear title to the equities that he has built. Mr. Coleman stated that he is trying to clear title so that he can combine it with someone else's and develop it into a legitimate enterprise, that the potential is there but not for one man to do alone.

Mr. Coleman stated that the same material does not exist on all of the claims, that the material on Claims No. 13, 14, and 17 is different as compared to the rock on the other claims, that he has marketed very little of that yet, and that if he were only given 5 or 6 of the claims it would offer very strong competition to the thing that he was doing already and to the work he has already done to hold these claims, that he would not say that it would destroy them but it would reduce them, that is, because there would be competition and someone else would have the choice material that he could not then provide, and that a large part of the value of the 5 claims would be contingent upon having all of the claims for two reasons: because of the difference in material and the fact that he would have much less equity to offer anyone as collateral to expand the enterprise.

V

Mr. Edward J. McClellan testified for the contestees in substance that he had been in the building and construction business for over 30 years and that he believed he was qualified to estimate values on improvements on the claims, that he believed in his opinion the roads on the claims would cost approximately $9000.00 to construct and that the residence and shop that Mr. Coleman has on the property could not be duplicated for less than $6000.00 or $7000.00 using like materials and present labor costs, that he is setting up a plant to process quartzite products which will include many things: sand and gravel, roofing granules, soil coat material for the Highway Department, and other products, and that he expects an annual sale volume of not less than $25,000.00 per year.

Mr. McClellan testified that in July they set up a temporary screen in the foot of a slide below the road and that during the months of July, August, and the first part of September his sales of these products were in excess of $4000.00, that he is selling three, four, or five loads a week as fill material and he believes that between 40 and 60 percent of the residences, and probably a higher percentage of the commercial buildings, that are built in Big Bear Valley contain some of the native stone, and that he has a local demand outside of the metropolitan Los Angeles area that will keep three, four, or five, possibly more men, busy producing quartzite building rock.

Mr. McClellan then stated on cross-examination that he leased a portion of the property on the 17th day of May 1958, approximately 5 acres, with the provision that he could remove quartzite materials or any minerals from any of the property excepting building stone, Mr. Coleman retaining the sale of building stone, and that the material he has disposed of in the last four months consisted primarily of rock for leech lines, drainage fields from septic tanks. Mr. McClellan stated that he had no knowledge of the sale of rock materials other than building stone prior to the date of his lease.

Mr. McClellan stated that he has a new truck and that he owns the machinery personally which is located on the claims and that he is authorized to remove all of the machinery which he has installed when the lease terminates, that it is his property rather than Mr. Coleman's.

At this point Mr. Coleman stated that he also has a truck, a tractor, a power plant, a pump, and a saw.

VI

Under the mining laws of the United States (30 U.S.C., 1952 ed., secs. 23, 35), in order to validate a mining claim there must be a discovery of a valuable mineral deposit within the limits of the claim. In order to satisfy the requirement of the discovery on a placer mining claim located for sand and gravel, it must be shown that the deposit can be extracted, removed and marketed at a profit. This includes a favorable showing as to the accessibility of the deposit, *bona fides* in development, proximity to market, and the existence of a present demand for the sand and gravel. *United States* v. *Everett Foster, et al.*, 65 I.D. 1 (1958); Associate Solicitor's opinion M-36295 (August 1, 1955); Solicitor's opinion, 54 I.D. 294 (1933); *Layman, et al.* v. *Ellis*, 52 L.D. 714 (1929). The same showing is required to establish the validity of a claim based upon the discovery of gypsum, limestone and other kinds of stone. *United States* v. *Strauss, et al.*, 59 I.D. 129 (1945); *United States* v. *Estate of Victor E. Hanny*, 63 I.D. 369 (1956). In the absence of marketability, the deposits are not valuable mineral deposits within the meaning of the mining law. *United States v. Strauss, et al.*, supra.

Where, in a hearing, the United States shows that the material which is the basis for an application for mineral patent is, in fact, of widespread occurrence in the area, underlying thousands of acres, and therefore constituting, not a deposit in the earth's substratum, but the substratum itself, it is incumbent upon the applicant for mineral patent to show that the deposit has an unusual or exceptional value "as compared with the great mass of the earth's substance". In other words, the common nature of the deposit being shown, the burden shifts to the applicant to show that his particular deposit "is of such value that it can be mined, removed, and disposed of at a profit." *United States* v. *Strauss, et al.*, supra. Thus "value", when applied to so common a deposit as, in this area, saragossa stone is shown to be, is defined in terms of a present market for the material, and its proximity to the market. *United States* v. *George W. Black*, 64 I.D. 93 (1957). The existence of the market is for the applicant to prove. And since these claims are situated in a national forest, the evidence sustaining the validity of the mineral locations must be clear and unequivocal. ibid.

It appears that the mineral on these claims is saragossa stone usable for building purposes, that it exists in substantial quantities on the claims, that the saragossa stone is common or country rock of the area and is of widespread occurrence, that the building stone on the claims is of the same character and appearance as other stone in the area, that there has been in years past a sporadic market for the building stone from these claims, that the market for building stones of all types in the Los Angeles area has amounted to approximately 5,000 tons per month and that the sales from these claims have amounted to in the neighborhood of 2,000 tons over a period of approximately 9 years. It has also been shown by testimony and by the record that these claims lie in the mountains of San Bernardino County in what is known as the Johnston Grade Area, and they are described in Special Report No. 31, Department of Natural Resources, State of California, as containing approximately 28,000 acres and that the saragossa quartzite may be over 1,000 feet thick throughout the area.

The locations of these claims are in an area lying north and east of Baldwin Lake. State Highway No. 18, following the sinuosities of Baldwin Lake, passes through Claims No. 16, 15, 1, 10, 5, 20, 8, and 11, in that order, and embrace an area on both sides of the state highway for a distance of approximately two and one-half miles, and directly south of the claims across Baldwin Lake a distance of approximately one-half mile lies Big Bear City.

Mr. Coleman states that he has used Bulletin No. 31 described above as a basis for location of their claims and that in accordance with this bulletin which states that the deposit is approximately 1,000 feet thick and knowing the approximate area of their claims he came up with a tremendous figure which may or may not be accurate as to the quantity of quartzite material on the claims. The computation would be thus:

43,560 sq. ft. × 1,000 ft. (depth) × 150 lbs. (per cu. ft.) ÷ 2,000 lbs. = 3,267,000 tons per acre.

Assuming that the Los Angeles area market uses 60,000 tons per year of all types of stone, as testified to by Mr. Burman, and that the entire market could be cornered by these contestees, there would be sufficient material in each acre of ground to supply the area for a period of approximately 54 years. Mr. Coleman has stressed the fact that he has not advertised their product and that he intends to do so, which would substantially increase their sales. Even assuming that this was true and that their sales could be increased 300-fold, this would be an annual production of approximately 66,000 tons per year which is more than the present market consumes in this area.

Bulletin 556, U.S. Bureau of Mines (1956), Page 829, describes the future outlook for building stones as follows:

> "The prospects for future expansion of the dimension stone industries are not widely believed to be bright. However, some producers feel that a larger market for memorial stones is in prospect and that the merits of natural building stone are attaining wider recognition by architects, builders, and the public. Stone is encountering increasing competition from the newer building materials, such as glass blocks and architectural concrete. Aluminum and other metals are being used to some extent in fields formerly occupied by stone. Stone will continue to be favored for large, dignified structures, but there is little promise of expansion in new fields of use. New sources of supply will undoubtedly be developed if the materials find favor with architects and builders, but such developments are likely to be at the expense of the old-established centers of supply."

Although one may take possession of vacant public land open to location under the mining laws and, after filing notice of location, retain that possession against all except the Government while he is in diligent prosecution of his efforts to discover valuable minerals therein, he may not continue to occupy the land after the Government has withdrawn its consent to his being on the land unless he can show that he has made a discovery of a valuable mineral deposit within the limits of his claim. *United States* v. *Everett Foster, et al.,* supra; *United States* v. *Strauss, et al.,* supra.

The Government withdrew its consent to the claimants' continued possession of the land in this instance when it instituted adverse proceedings against the claims. Unless the claimants can show as a present fact, not that the claims are in actual production or that a certain amount of money has been expended on them, but that the deposits on the claims can be disposed of in a present market for a profit it cannot be said that the deposits are "valuable mineral deposits" under the mining laws.

A showing of present production without a concurrent showing that the production is being marketed at a profit would not be sufficient to validate the claims. A showing of past production, without a showing that there is a present demand for the production, likewise is not sufficient to validate the claims. Associate Solicitor's opinion M-36295 (August 1, 1955).

I find here that the contestees have established a limited market for the types of building stone found upon their claims, not disputed by the contestant, and that the building stones found upon all of the claims are substantially the same in kind and quantity. I find further that the contestees have *bona fides* in development upon Claims No. 1, 4, 5, 8, and 10 and that the materials found upon these five claims considering the present and prospective demand after allowing for a 50 percent margin of error in the thickness of the material, as described in Special Report No. 31, is sufficient if produced and sold to sustain production for over a period of many years, and that the addition of other lands containing the same type of material and embraced within the exterior limits of a national forest is unjustified for it cannot be said that such additional deposits can be disposed of in a present market for a profit and they therefore cannot be claimed as valuable mineral deposits under the mining laws.

Accordingly, I hereby declare that the Baldwin Lake Quarry Claims No. 1, 4, 5, 8, and 10 are valid existing claims. Considering the Baldwin Lake Quarry Claims No. 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, I do hereby declare that they are all null and void and the application for patent is hereby denied as to these claims.

VII

The right of appeal to the Director, Bureau of Land Management, is allowed in accordance with information in enclosed Form 4-1366 made a part hereof, and the regulations contained in Form 4-1364, a copy of which is also enclosed.

John A. Wood, Hearing Examiner.

Enclosures 2

Distribution:

Alfred and Edna W. Coleman, P.O. Box 322, Big Bear City, Calif. (Certified Mail)

Standard Distribution

NOTICE OF APPEAL AND REASONS FOR APPEAL FROM DECISION OF HEARING EXAMINER OF DECEMBER 18, 1958

Notice is hereby given that the United States, the contestant herein, appeals from so much of the above-designated decision as relates to claims Nos. 1, 4, 5, 8, and 10. The reasons for this appeal are stated below.

The Government contends that the "mineral" material here involved—saragossa quartzite—is a common material which has not been subject to mineral location since passage of the Act of July 23, 1955 (P.L. 367); that at no time has there been a valid discovery in the sense that claimants have been able to market the material at a profit; and that at best the claimants merely have hopes of marketing this material at some time in the future.

The contest herein originally related to eighteen mining claims owned by Alfred and Edna W. Coleman, known as the Baldwin Lake Quarry Claims Nos. 1 and 4 through 20, inclusive, located in San Bernardino County in Southern California. Following the initiation of patent proceedings by these claimants the Government filed a complaint alleging that the land whereon the claims were situated was nonmineral in character, that no valid discovery had been made, and that as to ten of the claims (nos. 7, 9, 11 through 19, inclusive) $500 had not been expended thereon. A hearing was held at San Bernardino, California, on September 16, 1958, and, on December 18, 1958, a decision was rendered by the Hearing Examiner holding five of the claims (nos. 1, 4, 5, 8, and 10) to be valid and the remaining claims to be null and void. This appeal relates to those five claims which were thus held to be valid.

The decision of the hearing examiner thoroughly and competently reviewed the evidence in this case. No purpose would be served by again reviewing the evidence here, and that task will not be attempted. The appellant's difference with the examiner's findings lies solely in the conclusions to be drawn therefrom.

Briefly, the evidence shows (and the examiner has found) that the claims relate to country rock consisting of what is known as saragossa quartzite. This rock, in the neighborhood of the claims, covers some 28,000 acres, or about 44 square miles, to a depth of perhaps 1,000 feet. To this rock the claimants attribute such a value for building purposes as to entitle them to a patent to their claims.

The rock is not fissile; when it is worked it breaks with random fractures so that the production of slabs is largely a matter of picking and sorting. As to its use, Mr. Coleman testified (Tr. 72):

> From that can be built ornamental walls a large portion of fireplaces, in fact a whole fireplace if they are not too critical about its beauty, or like it rough, and many other things of that nature.

During the ten years within which these claims have been held, the claimants have performed development work (mostly the construction of roads and of a home) and have sold a small quantity of the rock. The value of this work, and the extent of these sales, as testified to by Mr. Coleman (Tr. 101-116), is for convenience set out in tabular form as follows:

Claim no.	Value of improvements	Material removed, and its value		Transcript citation
1	$6500 (home)		$1,500	101–3
4	750 (road)		350	105–6
5	4000 (road, work area)	700 tons @ $12	8,400	103–4
6	150	20 tons @ $12	240	110
7	200	15 tons @ $17.50 (approx.)	250	110–13
8	1500 (road)	90 tons	1,350	106–7
9	150	(wood only)	0	109
10	1500		1,500	103
11	150		0	107–9
12	100–150	10 tons	120	113–6
13	100–150	5 tons	60	113–6
14	100–150		0	113–6
15	100–150	5–10 tons	100	113–6
16	100–150	10 tons	120	113–6
17	100–150		0	113–6
18	100–150		0	113–6
19	100–150		0	113–6
20	1500	400 yds. aggregate @ $4–5 (Approx.)	2,000	104–5
	$17,200–17,600		$15,990	

In order to produce these limited values it was necessary, according to Mr. Coleman (Tr. 116-8), for him to labor some 300 days a year over a period of ten years, working fifteen hours each day. The value of this labor, as stated by Mr. Coleman (Tr. 117-8), was not less than $3.50 per hour, or a total of $157,500.00.

Thus, using this claimant's own figures (and they are the only ones available), operation of these claims yielded nothing but overwhelming loss. True, it was only a bookkeeping loss engendered by the downgrading of claimant's labor but nonetheless it was surely not the kind of yield that could be denominated a profit. Even should these figures contain a fivefold error, and the true value of Mr.

Coleman's efforts be but $32,000, there would still have been a profit of only the most nominal sort.

Doubtless anyone, by sedulous effort, could remove almost any material from the public lands and sell it for money. But where, as here, the reasonable value of the labor expended greatly exceeds the price received, there is no profit in fact, for profit has not been created merely by the seller's willingness to charge little or nothing for his labor.

A truer picture of the value of Mr. Coleman's claims is provided by the testimony of Mr. John A. Burman, a dealer in stone products in Southern California (Tr. 49-59). His company had once stocked Big Bear stone, as he called it, but he had sold none of it for two years; and he had but one call for it during that time; it was not presently being sold in the area and of four competing stone dealers, he knew that three of them had sold none of this stone during the last year; and the stone "did not seem to enjoy much popularity in the L.A. area".

Bleak as this picture is of Mr. Coleman's prospects, it is made even bleaker by the circumstance that if some of the claims should be withheld from patent, the value of the remainder would be further depressed, both because of competition and because of the narrowed choice of materials available to buyers (Tr. 130-1).

Even the claimant recognizes that in terms of actual sales performance these claims have not demonstrated a value; such value as there may be lies in their future prospects. Of these claims he says (Tr. 73):

> There has never been too good a sale, not because the rock is not good, but simply because I haven't advertised one single word any place for years. I first wanted to get the thing open to a point where I would deliver in large quantity, and we have about reached that point now.

On the basis of these facts we submit that the rock on these claims comprises a "common variety" which, since 1955, has not been subject to mineral location because of the restrictions contained in the Act of July 23, 1955, 30 U.S. Code 611; further, there has been no valid discovery on these claims prior to that date, because the quartzite on the claims has never been marketable at a profit. The claimant's intention to advertise and develop these claims in the future has no bearing on whether or not he had made a discovery in 1955. The following observation in *United States v. Foster,* 65 I.D. 1, 8, is apt:

> A prospective market, using that form in the sense of a market to be developed in the future, is not sufficient to establish the validity of a claim under attack at the present time.

We therefore urge that the decision of the hearing examiner be modified and Claims Nos. 1, 4, 5, 8, and 10 be held to be invalid and void.

Respectfully submitted, Charles F. Lawrence, Attorney for Contestant.

Copy—Exhibit A.

P. O. Box 322
Big Bear City, Calif.
March 17, 1958

M.A. L.A. 0137951
Contest 6833
M:PFM: agd
4.1

United States Department of Interior
Mr. Paul B. Witmer
Land Office
215 W. 7th St.
Los Angeles 14, Calif.

Answer to Complaint of March 5th Involving: Baldwin Lake Quarry Claims Nos. 7, 9, 11 to 19 Inclusive

I

a. To the best of our knowledge the contestees believed after careful investigation of all available maps and publications and careful inquiry at the local Ranger Station in Big Bear Lake District, and at the San Bernardino County office of the U. S. Forest Service in San Bernardino, that lands embraced by the claims in this contest were open to mineral location at the time that the claims were established and recorded.

b. That the claims were established with the knowledge of and not in any way disputed by the personnel in charge at that time of the part of the San Bernardino National Forest in which the claims were located.

c. For our authority to establish these claims, we refer to and quote from State of California, Department of Natural resources—Legal Guide to Prospectors and Miners; Division of Mines, Ferry Bldg., San Francisco; prepared as a Supplement to Mineral Information Service Volume 5 No. 7, published October, 1952. Page 8.

> "Good Faith—Good Faith as an element in initiating of mining rights under Federal and State Laws, is absolutely essential to the validity of such rights and may not be dispensed with; lack of it vitiates any at-

> tempt to initiate such rights,'' All that we did, was done in absolute good faith.
>
> ''Lands open to Location (Sec. 2319 Revised Statutes of U. S.) ''All valuable mineral deposits in land belonging to the United States, both surveyed and unsurveyed, and the lands in which they are found, are free and open to *exploration, occupation and purchase,* except that aliens may not obtain patent. This includes mineral land within the national forest.''

The other part of paragraph ''Lands'' same Page 8 aforementioned publication, that clearly applies to the claims named in this contest states:

> ''land valuable for its mineral deposits is land which contains minerals in sufficient quantities to justify exploitation and development. The mineral deposits may be metaliferous [sic] such as gold, silver and other metals, or *non-metaliferous* [sic] such as alum, amber, *building stone,* diamonds, gypsum and like substances.''

Also on Page 9 of same legal guide—headed Mining Claims within National Forest—

> ''Generally speaking, vacant United States land within the boundaries of National Forests, is open to location and entry for mining purposes under the general mining laws, subject to jurisdiction of the United States Forest Service.''

It was the above paragraph that caused me to inquire as to the status of the lands now being contested, before I even started to locate the claims, and at the time I made inquiry, the answers given by the men in charge encouraged further effort to establish a quarry.

We also examined previous publications on mining laws by both the State of California and the United States Department of the Interior, the last being Lode and Placer Mining regulations, Part 185 Title 43 as amended and including No. 1, 1940 U. S. Printing office 1947, and Manner of Locating and Holding mineral claims in California by A. H. Ricketts; Revised by C. A. Logan. Reprint from California Journal of Mines and Geology Volume 44, No. 1 January, 1948.

We also went to the County Library and read the law as printed in American Mining Law Volume II by Ricketts and no where were we given evidence nor did we find evidence that we were committing any trespass or breaking any law or guilty of any wrong doing. The claims were filed starting February, 1949, and a constant check has been maintained by us from that date to the present time to ascertain that we had obeyed any new mining laws, as well as all of the older ones in existence.

II

The contestees, Alfred and Edna W. Coleman, do assert their ownership by co-locating of the above named unpatented mining claims. The address of the contestees is: P. O. Box 322, Big Bear City, Calif.

III

Said mining claims are situated in San Bernardino County, State of California, and as nearly as can be ascertained by careful surveys made personally by Alfred Coleman, can be identified and are embraced by and within Sections 1, 2 and 12 in T. 2N., R 1E; and Sections 6 and 7 in T. 2N, R 2E., S.B.B. & M.

The above survey data by Alfred Coleman, was submitted with maps and records for examination to Mr. Sanborn, the U. S. Forest Service mineral examiner and after carefully checking and copying by Mr. Sanborn, he was satisfied that all data and locations in the patent application were reasonably accurate as to location of the claims in conformity to public surveys and by legal subdivision.

IV

As far as is known to the contestees, Alfred and Edna W. Coleman, there are no proceedings pending for the acquisition of title to, or an interest in the above described lands, except patent application M. A. 0137951 L. A. Contest No. 6833 which is being answered herewith.

V

a. The contestees assert the proven facts are as evidenced by Special Report No. 31 Geology of the Johnston Grade area, California Bureau of Mines by Robert Guillon, State Geologist; on Page 1—"The deposit of Saragosa Quartzite is well illustrated and clearly described as the topmost mineral overlaying the area described."

The fact that it is not claimed for its other possible mineral content, metalliferous and non-metaliferous, bears no significance to the value of the quartzite itself. It is one of the finest building stones available in southern California and as such comes under Building Stone classification. It also comes under the classification of nonmetaliferous commercial minerals for probably *more possible industrial uses* than any other building stone or single commercial mineral that is available. By this the contestees assert a long list of industrial uses can be made of the quartzite when crushed, classified and in some cases purified.

The site of the deposit is also ideal for a long term permanent operation; the resource of material in the deposit covers practically every square foot of the claims in question. The site and terrain have the advantages of gravity from the claims to State Highway—fairly level through the claims, and power line paralleling Highway and also natural water supply upon the group of claims. Copies of the above report No. 31 were furnished as part of the Patent Application.

The material, saragosa quartzite, has been accepted and officially approved for building for all structural purposes, according to City and County of Los Angeles, and County of San Bernardino building codes, and by Safety and Planning Commission after certified tests by Smith Emery Co. of Los Angeles. Smith Emory are industrial chemists.

b. The contestees quote again from Legal Guide to Prospectors Page 9

> "Discovery—This term has a technical meaning in mining. It may be defined as knowledge of precious metals (Or other valuable mineral) within the lines of the location or in such proximity thereto as to justify a reasonable belief in their existence."
>
> "The discovery should be, but not necessarily, of present commercial value; be situated within free territory and within the boundareis of location, and may be underneath or *upon the surface* of the ground. The dis-

> covery is sufficient if it justifies a person of ordinary prudence in making expenditure of labor and material with reasonable prospect of success in developing a paying mine."

> "A discovery can be disected by a side or an end line to constitute discovery in two independent locations."

> "A placer deposit covers all other types of mineral deposits, including *building stone*."

The contestees assert that according to Page 1 contained in special Report No. 31, made as part of Patent Application, that the deposit of mineral quartzite is described as upwards of one thousand feet thick and covers over a square mile in surface area so that the presence of a very large and permanent supply is available is no exaggeration.

c. Reference Federal Statutes on Mining Locations. Title XXXII Chapter VI, Revised Statutes of the United States, Sec. 2319:

> "All valuable mineral deposits in lands belonging to the United States, *both surveyed and unsurveyed,* are hereby declared free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States."

Contestees assert that they did occupy claims Nos. 7, 9, 11 to 19 inclusive, as part of the whole group of contiguous claims Nos. 1 and 4 through 20 inclusive, for the purpose of establishing a permanent quartzite quarry and that much more than $500.00 was expended for the benefit of each and every claim in the group or more than a total of $9,000.00 for the group of 18 claims. The total expenditure was made within both requirements of the law and within the most important development needs of a permanent quarry.

Again quoting from State of California Legal Guide to Prospectors, Page 26, note carefully:

> "Annual Expenditure and Assessment Work—Within *withdrawn areas* neither assessment work nor patent is necessary to preserve possessory right of the claimant, and he holds the claim in perpetuity unless he loses his right by abandonment."

If this be so, we need not have made any expenditure on any of the claims as the contestant claims in his complaint, as the "*land is withdrawn.*" This would void any deterent effect to Patent Application because of lack of sufficient expenditure on any specific claim within the withdrawn area.

Quoting again from same paragraph on Annual Expenditure, Page 26,

> "*Labor may be done or improvements made upon or at a distance from any one of the locations comprising a group of claims, when of benefit and value to the entire group.* The test of sufficiency is whether the expenditure tends to facilitate the development or actually promotes or tends to promote the extraction of mineral."
>
> "Any building, *roadway* or other improvements used in connection with and essential to the *practical development of the claim* will enter into and form a part of the expenditure for improvements."
>
> "Any work done for the purpose of discovering minerals is improvement."
>
> "*Assessment work may be done on or off the claim itself, if of benefit or value to it.*"

So, therefore, the contestees assert that there was no immediate requirement by law for them to spend $500.00 on each and every individual claim of the group regardless of whether the lands in question were or were not withdrawn. But more than $100.00 per year per claim was actually put into development for the whole group of claims. The contestees fully understand that $500.00 per claim, or $100.00 per year for five years, would mean a total expenditure on claims of $9,000.00 to make the claims eligible for Patent. We, the contestees, therefore undertook to do the necessary location and assessment work as improvements by the steps and labor and expenditures as described as follows:

1. A building had to be set up to live in. A miner is just as entitled to a place to live as a homesteader, and living on the site of operation cuts down travel time and expense, and allows more time for development of the premises. The cost of building and time saved both tend toward development.

2. Although the law states clearly (Sec. 2303—Manner of locating, marking and describing placer claims) that "where the United States survey has been extended over the land embraced by the location, however, the land may be taken by legal subdivisions, and no other reference than those of such survey shall be required, and that a claim so located need not be staked or monumented. The description by legal subdivision shall be claimed the equivalent of marking." We claim the land by legal subdivision.

In this group of claims the terrain was so rough and so overgrown that some kind of a survey was very essential to determine what subdivision the deposits of quartzite were actually in, so that work could be done within the boundaries of the claims, therefore, we bought a good transit and other surveying equipment and went to work not for hours, but actually well over a months time to determine with fair accuracy where the boundaries lay on that mountainous terrain, and then for another month or so surveyed to determine the future course of access roads up the mountain to the top of the deposit, for the purpose of both location work and *to properly develop the quarry from the top down by benching off the deposit, and thus avoiding any future hazard of overhang, cave-in, or rock slide.* There was no point in tunneling into this deposit on top of the mountain; the need was to make good access roads for equipment to quarry faces to be opened from the top down.

Any conservative estimate of the value of more than two months work surveying will run up a sizable bill *directly chargeable as exploration work to the whole group of claims.*

3. Next came the job of acturally building access roads up the mountain to the deposits where no roads had ever been. Evidence of lack of roads is shown in Aerial Photo No. AXL 16-F-126 taken by Western Laboratories in June of 1949, about four and one-half months after I filed on the first claims in February, 1949. There were no roads, not even sufficient to fight fire and this mountain has once been burned over.

When Mr. Sanborn, the U. S. Forest Service Mineral Examiner drove up and down three and one half miles of well graded road on this mountain, to points on all claims except claims 14, 17, 18 and 19—he could not possibly evaluate the difference between the completed road and what it had cost in time, material and labor to do the job. He never saw the conditions at the start. Suffice to say no government agency, or any private individual thought it worth the long and expensive effort required, until I personally explored and evaluated this quartzite deposit.

Against this job can be charged every minute of my time other than that which was essential for other work—probably averaging four hours a day for about eight years, six days a week; one new tractor completely worn out in the operation and its replacement partly worn out plus two unlicensed trucks working on the property, plus some casual labor hired when it could be had and used to advantage, plus many worn out tools, plus a worn out car used on the place for transportation, plus many tool replacements and blacksmith work and welding, plus loading and blasting time, plus man handling alone thousands of tons of rock.

To bear out this statement I am going to present for examination at the hearing, Aerial Photo of the place and many photos taken of inital work to illustrate the real work and actual cost. Estimates that someone arrives at without knowing the facts are very unfair as to total expenditure and as to expenditure on individual claims.

Furthermore, last year a fire insurance policy for $8,000.00 was issued on the buildings by a very reliable company that only insures a percentage of the real value of improvements, and since that issue at least $3,000.00 more improvements have been added to the claims.

Water has been developed, electric power installed; propane gas installed; septic tank installed. Heating installed for the purpose of further promoting efficient operation of the enterprise which is our sole livelihood, and income, and business and residence.

Original location work at $1.00 per acre per claim (Sec. 2304 and 2305) discovery work on mining claims, consisted of exploration, surveying and open cut work to working faces.

Assessment work consisted of access roads up the mountain and to working faces and bench levels and mechanical work necessary for production and development of water, sanitation, *shop space,* etc., etc. No man would undertake to reproduce what is visible today on the property in labor and material equity for less than $20,000.00. This whole enterprise accomplished at the risk of life and limb. We desire to clear title to the labor and material equity in and on the land so that the whole enterprise will become usable collateral for expansion; the potentiality exists because of the natural resource, plus our development work and marketing efforts. We have equity of labor and material built up through the years by hard hand labor and self denial, and *we are entitled to a clear title to the claims and to our equity.*

A large corporation could not have developed this enterprise to its present value much cheaper than we did. The only difference in the expenditures would be that a corporation would lay out a lot of cash and man hours over a shorter period of time. I laid out know how and man hours over a longer period of time, with less cash. The value of development is all there just the same.

The quarrying operation on this deposit cannot be economically conducted from the bottom of the deposit up—it has to be from the top down to be efficient and economical and all location and development work was planned with the knowledge that to dig under the deposit or to the side of it, would only produce hazard and waste in the long run. All past attempts to commercialize this deposit failed, because of too much cost and impractical quarry operations. No one ever ventured the necessary effort to do a correct and permanent job of quarrying here until I undertook the job and paid the costs. There are no unpaid bills.

To try to short cut under real necessary expense spelled failure and *necessary expense was far and above that required to be shown for Patent Application.* We have not failed. “If the test of sufficiency is what it is worth,” we have paid what it is worth. We have expended more than enough by any reasonable measurement to justify the claims.

Furthermore, we again assert that the only practical way to carry on permanent development of this quarry *is to work from the top down to avoid waste and hazard and to do this it is absolutely necessary to have access to the top and ample working space to properly grade roads down to the highway level to transport equipment and material on the claims,* and to classify and stock pile products. *The access road as now laid out and completed might well have to be rerouted for any kind of efficient operation if any of the claims of the group were invalidated.* Since the rise to the mountain top is well over 1,000 ft. from the highway level through the deposit, if claims were worked one at a time from the bottom up, there would be *so much road work* even to move equipment on the claims *because of the sharp rise of the ground, that there would be less than half of the space available for quarrying and it would be impossible to quarry for half the available depth of material, without creating high over hang from adjacent claims with resulting hazard from earthquake or rock slides loosened by blasting.*

Since the deposit is above ground, by going to the top and far back on the claims contained all in one group, quarrying can then be carried on *to the maximum depth of material of value without waste or hazard. To invalidate any of the claims will do serious damage to all of the group. It is both impractical and unjust to invalidate any of the claims.*

There are clear examples all around the base of the mountain of the illdirected efforts of people trying to *freeload off the public domain without any intention of ever making any improvement or doing any real development work.* The results of their efforts can be seen in thousands of tons of wasted and neglected material and ugly rubble.

We have set an example of diligence and far reaching planning that can result in permanent good in the development of this natural resource, and be a guide post for other similar developments. This deserves recognition by the people who administer public property but who never even spent enough on this site to make access to fight forest fires, never policed it efficiently enough to prevent it from being an unauthorized dump for the nearby communities. We cleaned up this trash and prevented repetition of such practice by installation of four gates at the points of access from the highway. This also is improvement. The spring developed as a water source is heavily fenced with rock to prevent cattle damage, leaving ample overflow for drinking.

If the protest was entered by the Forest Service as routine to exhaust all possibilities of fraud or misrepresentation, then our title to the claims should be clear and without cloud after this answer to the protest has been evaluated by the hearings officer.

We shall be glad to answer to the best of our ability any other questions in regard to the claims. The common practice of location work and development work such as shafts and tunnels were not in the best interest of improvement or development of this quartzite deposit here.

Here we have a case of large amounts of material pushed up by the forces of nature from deep in the earth to form a mountain top—defined geologically as a thrust. This thrust of quartzite was so hard that overburden eroded from above and around it, leaving the deposit on top of the mountain and spilling down the sides of the mountain. There is no overburden that needs exploring by digging. What was needed was proper location for establishing the boundaries of the claims, and access roads to quarry the material and bring it off the top and side of the mountain.

The roads and quarry faces are *open cuts.* A pretty clear idea of material already blasted and moved can be obtained from pictures I shall bring to the hearing. I do not have the negatives or these pictures so cannot furnish copies. Thousands of yards of material have been moved in clearing the way for access. Many cords of pinion, juniper, and ironwood had to be cleared to eliminate fire hazard and to clear road bed. All this definitely represents improvement. The mineral examiner could see none of this work in driving over a completed road.

Besides all the surface material handled in this development work, the whole mountainside consisting of about 80% rock and 20% humus and fines mixed with it so compacted by natural action that buried masses all along the road bed had to be blasted one by one, and then the material cracked up by sledge, wedge and bar, tossed out by hand. Then in a years time, nature reseeded the road surface so that very little of this effort is visible. The material taken out was used three ways: Rubble for shoulder of the road; fills where there were washouts, and broken material to refill blast holes, *so that material is not now very visable.* This task alone was almost a labor of Hercules—the buried rock masses were frequently large enough so that a bulldozer would be useless, the terrain so rough that the traction was unsafe for a tractor—nothing but long patient man hours of labor and dynamite could open the way. That's how it was done.

No good can come of any short sighted or ill advised effort to expropriate the claimants of the land in question after more than nine years of honest, diligent, sincere effort in sound development work, and a large cash expenditure for machinery, building, etc., far in excess of that required by law. There is not, and never was, any fraud contemplated in this enterprise. The foregoing lengthy answer to questioning our total expenditure of effort in development was, we believe, made necessary by the fact that the claims are not for the *usual buried mineral deposit, but for a bare inaccessible mountain top deposit requiring special understanding and a special kind of development.* I am past sixty-one years of age and have more than forty-five years of mechanical and construction experience, besides experience and license as Chief Engineer in the U. S. Merchant Marine. During the past nine years practically all my entire efforts have been devoted to Baldwin Lake Quary claims, and it now is our sole source of income.

To invalidate these claims means expropriating almost ten years of life and labor and self denial on the part of two citizens, who have pioneered in the true American fashion. It means wrecking the only security they have been able to build for their independence and retirement by their own hard labor and resources. During all this effort I have not drawn in any way upon public funds, or public aid for any support.

We sincerely hope that the patient effort put into the enterprise and into this answer, will receive proper recognition. We do not believe we should in any way be penalized by technicalities or extreme burdens of proof because of frauds and misrepresentation perpetrated by many dishonest people, that have now made the laws so strict that the burden of proof is almost beyond endurance for an honest man and *often unjustly kills private enterprise because of fear of too much red tape.* Our effort at clearing this title started well over *two years ago,* in January, 1956, and it has been a long struggle to get final action from then on.

The fact that hundreds of tons of this quartzite are now in use as retaining walls, guardrails, steps, drinking fountains, etc., by State Highway Department, County Road Department, United States Forest Service on various installations is additional evidence that the material has value for building purposes, long since recognized.

We do not wish to be classed with *irresponsible free loaders* who merely try to get some easy pickings off public domain. These people, and the government agencies listed above have all gone to rock slides adjacent to the highway and hand loaded material from off the surface until *this small but ready source* was depleted to a point where it became impractical to come back for more until real development work was planned.

We request that the hearing of contest No. 6833 be held as soon as possible to relieve the contestees of the long drawn out burden of proof required by the several government agencies that must render decisions.

Yours truly, Alfred Coleman, Edna W. Coleman.

AC/mmm

Alfred Coleman
P.O. Box 322
Big Bear City, California

January 16, 1959.

BUREAU OF LAND MANAGEMENT
Office of the Hearing Examiner
P.O. Box 4231—Sacramento 21, Calif.

To: Director,
Bureau of Land Management
Washington 25, D.C.

Re: Contest Decision 6833—M.A. 0137951

STATEMENT OF REASONS FOR APPEAL

Dear Sir:

1. All of the claims in the Baldwin Lake Quarry group, 1 and 4 through 20 inclusive, were located under the Laws of the State of California and United States Government Mining Laws, as published at the time of location. We quote herewith reprint from California Journal of Mines and Geology, Volume 44 No. 1, January 1948.

> "Manner of locating and holding claims in California by A. H. Ricketts, revised by C. A. Logan as per Page 3, entitled Mining Claims within the National Forest. "*The land is or promises to be more valuable for mining than for any other purpose.*"

2. We state that all of the above group of claims are and *promise to be more valuable for mining or quarrying quartzite than for any other purpose.*

3. We state that all of the charges made by the Forest Service in Contest 6833 were clearly refuted by the testimony of the various witnesses at the hearing and that such testimony has disproved each of the charges of the contest so that there is no just cause shown for the invalidation of any of the claims of the group *by the several charges* made in the protest.

4. Now referring to Paragraph VI, Page 10 of decision —the Marketability of Quartz and Quartzite products has

been clearly established not only by some 25 sales books of filled and paid for orders, but as far back as the year 1936—23 years past, some of the uses of quartz are listed in the Minerals Year Book 1936, some of which are the following:

We quote: "Quartz is used in the manufacture of ferrosilicon, an iron silicon, steel alloy product of the electric furnace; for white wear and enamel; as packing in acid towers and water filters; for refractory purposes (in the manufacture of firebrick); as a filler: as an abrasive agent in some kinds of sandpaper, soaps and scouring compounds, metal polishes, and safety matches. Ground sand, or "pulverized silica," is used widely in the ceramic trades; as a silica wash for molds in steel foundry works; as a filler in preparing roofing, paint, and other similar products. Much "sharp sand" is used in sawing and rubbing granite, marble, slate and soap stone. It is also used in rough grinding plate glass previous to smoothing and polishing, and for sandblasting castings. By railroads "sharp sand" is used to give the locomotives a firmer grip on the rails in wet or slippery weather, or in climbing heavy grades. It is used in profusion for the same purpose upon the highways of the Northern states, in the sleety weather when everything is coated with ice. The use of quartz sand as a plaster, cement and concrete aggregate is so common that it need not be discussed here, although many chapters have been written upon the subject in engineering texts and magazines.

Water glass has become so important an article of commerce that it is now shipped about the country in tank cars. By the fusing of silicon dioxide with sodium carbonate, carbon dioxide is liberated and a new substance known as sodium silicate is formed. It is soluable in water and in concentrated solution tremendous amounts are used as an adhesive; (silica glue), in making paper cartons, as an egg preservative, a filler in cheap soaps, a weather proof coating for disintegrating masonry, fireproofing for both wood and cloth, cementing materials and for many other purposes.

It is one of the most versatile substances in the entire range of quartz materials, having almost unlimited commercial possibilities" *end of quote* from Page 294 of book, The Quartz Family Minerals, by H. C. Dake, Frank L. Fleener and Ben Hur Wilson, Head of Geology Dep't. Joliet Junior College; President, American Federation of Mineralogical Societies. Published by Whittlesy House, New York and London."

Let me quote herewith from Circular No. 1278, United States Dep't. of the Interior, Bureau of Land Management, Washington, information in regard to mining claims on the public domain. Paragraph 5—Minerals Subject to Location.

"Whatever is recognized as a mineral by standard authorities, whether metallic or other substance when found in public lands in quantity and quality *sufficient to render* the lands valuable on account thereof, is treated as coming under the purview of the mining laws."

We have proved both quantity and various quality of quartzite upon all of the various claims of the group in M.A. 0137951 and Contest 6833. The various uses listed as far back as 1936 in the book, "The Quartz Family Minerals" and described by Standard Authority in this book, plus our own sales books and records of recent date, plus the vast expanding economy of our country with many now new known uses and applications of any natural resource of the present times give ample promise for possible uses and larger markets for our quartz products as our plant and facilities expand.

5. To expand our enterprise we need a clear title to our sources of various qualities of quartzite on the group of claims, and a clear title to the honest labor and development equities built by years of earnest effort.

When this title is cleared we can then present our equities and the value of our sources for instance to the Small Business Administration Loans for financial assistance to expand this enterprise. With unpatented mining claims we have very little that can be called *good collateral* by a bank or Loan Company.

6. To invalidate a large part of the group of claims very greatly reduces the varied assorted products we visualize from the whole group of claims, by drastically curtailing the sources of supply we have worked so hard to hold and to develop. For instance, on Claim No. 14 there is material that cannot be duplicated upon any other claim in the group. This same statement holds true for Claim No. 13

and for Claim No. 5 and Claim No. 8 and Claims No. 15 and No. 16, etc.

True, there is a quartzite deposit on all of these claims, but there are such distinct differences in quality, cleavage, grain, color, and chemical analysis in the material on different claims of the group, that where the stone on one claim will make beautiful rustic ornamental rock of distinct coloration, it would have no cleavage suitable for patio paving and would be so saturated with iron oxides as to be useless to produce iron free silica. Whereas, the quartzite on an adjacent claim is of pure white and granular consistency, very suitable both for ornamental purpose and to produce an iron free silica product for numerous industrial products.

7. Mr. Wood, the Hearing Examiner received a verbal request from me to come and examine this project so that he would have a clear picture of what he was passing judgment upon. He replied that he would not do so as it might influence his decision,—neglecting the fact that truths are usually self evident.

Consequently, this decision is based only on hearsay evidence much supplied by biased contestants and witnesses. Common building stone was stressed far too much at this hearing. Mr. Sanborn, the Mineral Examiner for the contestants took to some extent an adverse view as to values which he expressed and which can be readily disproved by the real facts. This quartzite is not by any stretch of imagination a common building stone although it has very fine application for this use. There are far too many potential markets to limit the production from these claims to build stone alone.

One well developed quarry operation with good portable equipment such as we are rapidly developing at present can produce many different products for many different industrial uses, providing our various sources are not cut off by this unjustified attempt at invalidating most of this group of claims upon such a flimsy pretext as stated in the decision. The decisions quoted by Mr. Wood do not fit or apply to this special case.

8. A further very important reason for maintaining the whole group of claims intact is that the project is so situated upon steep terrain on the south and east slope of

Gold mountain, so each claim by the nature of the terrain upon which the claims are located is essential in part for access space to reach other claims adjacent to and beyond and above any given claim for proper benching off from the top down so as to avoid rock slide hazard as development and excavating progresses. Much space is also essential to build roads upon the rapidly rising terrain with long easy truck access grades and suitable switch backs from one claim to another and to the Highway. If, for instance, No. 6 Claim and No. 7 Claim were invalidated, *this cuts off all practical access* to all claims above. I have been unfairly expropriated of my labor and equity in these claims and then a greater expense and new effort on surrounding adverse terrain would be absolutely necessary before access were attained to claims 6 and 7, unless all the rest of my access work on Claims 1, 4, 5, 8 and 10 were also expropriated and made public property.

9. What legal or moral right have the contestants to expropriate ten years of annual assessment work performed for the purpose of holding 13 claims amounting to a value of $100 per year per claim, or total of $13,000. of honest effort and expenditure performed in good faith and entirely for the benefit of all of the claims, when the law clearly states, "United States Dep't. of Interior, Bureau of Land Management, Washington, Circular No. 1278, Page 3, Paragraph 17. Common improvements—An improvement made upon one of a group of contiguous claims owned in common, may be applied to such claims of the group in existence at the time of improvement is made, shown to be benefited thereby".

Note all claims of this group are contiguous, see attached plat. All claims are equally benefited by the access roads without which it would be utterly impossible to carry on any production or movement of equipment upon this exceedingly rough terrain.

All claims are also equally benefitted by the development of plant on the site for classifying and processing material at or near the source of supply to eliminate costly wasteful hauling. All claims are equally benefited by development of shop and maintenance equipment, water development, etc. necessary to production. All claims are equally benefited by good loading facilities and special equipment designed and built to aid in production of materials from this natural resource.

We suggest here that you take the plat furnished with this appeal and compare it *by legal subdivision* with the Lucerne Quadrangle of San Bernardino County, California. You will find by this comparison of location with the contour lines upon this U.S. Coast Geodetic map and the altitudes marked upon these contour lines, that the greater part of the terrain in the group of claims is of very steep pitch in a small area. The contour lines indicate a rise in the terrain of 50 ft. from one line to the next in very close proximity. This necessitates long easy grades occupying considerable land to make suitable access for trucks and other equipment climbing reasonable grades to the various marketable quartzite deposits. A letter of appraisal has been furnished by our local bang manager, Mr. J. B. Quayle, appraising this grading work alone in the group of claims at $15,000, which is sufficient for 30 claims at $55 per claim. The group only consists of 18 claims which would require a minimum of $9,000 at $500 per claim to justify patent proceedings.

We are now paying possessory right taxes upon all of the 18 claims and have performed annual assessment work for the benefit of all of the claims for 10 full years, or a total of $18,000 in improvement and development of various kinds, plus many more thousands of dollars necessitated in the normal conduct of our business upon this mining site.

I say to you, Mr. Director, that no one can justify morally or legally in the last analysis, expropriation of any of our equities in labor or investment. Words can be "twisted" but this will not change self evident truths. Garibaldi said, "Give me the ready hand rather than the ready tongue." Mine, sir, has been the hand that has accomplished this labor of Hercules.

Any invalidation upon any of this group of claims will be in direct contradiction to the published policies of the Bureau of Land Management and the Department of the Interior where they state they will do all that is consistent to *encourage* and to *cooperate with the miner*.

The man who develops natural resources and puts dormant land into production and onto the tax roll deserves very great consideration. He adds to community and national wealth.

I have done this after fighting a war the hard way to protect the liberties and rights we all want to enjoy.

This project was envisioned and explored by the claimants in such a way that it is practical so as to justify a prudent man to spend time and money upon it. This we have done in such a way that there are no debts and no squandered stockholders money. We are the sole claimants and the hard earned equities in the claims are our own. By our own investment and our own labor.

We have made access or are in process of making access to valuable and varied deposits on each and every one of the group of claims for the benefit of all of the claims and for the ultimate benefit of the project as a whole. *To produce various products for various markets.*

Mr. Sanborn is his testimony on Page 24 of Hearing of Transcript stated the improvements he found consisted principally of improvements which were of the nature to facilitate the removal of minerals from the claims in the nature of roads.

Mr. Sanborn also testified on Page 45 of the Hearing transcript that where high faces are developed without benching off, the faces become dangerous.

On this long range enterprise, I worked as was practical and as the law requires in regard to a prudent man's expenditure and effort. Therefore, I built a sound and permanent basis for all future expansion while doing proper development work to hold claims and to produce the mineral claimed.

All of the work had to be progressive from the most accessable claims to the least accessable claim containing deposits of value. All of the work could not be undertaken at the same time.

My efforts were all legitimate and well and wisely distributed for the benefit of all of the claims and of far more worth than the minimum required by law for all of the claims. I therefore say to you that in consideration of the true facts of this case, we request that you promptly overrule Mr. Woods decision and validate all of the claims of the group as your reconsidered decision and immediately authorize the publication of intent to patent all of the claims which have not already been validated. Namely, Baldwin

Lake Quarry Claims Nos. 6, 7, 9, 11 through No. 20 inclusive, as described by legal subdivision in the original patent application, thus putting a proper ending to this three years of unsatisfactory proceedings that have not and will not profit anyone if still contested.

I say to you that no one can predict from past records what the future of an enterprise or uses of a product may be. Remember Websters old dictionary definition of uranium, "A hard white metallic substance with no known use." With all we know today, which is far in advance of 1936, when the uses of quartz were described as many, the future market cannot be accurately predicted, but it is most certainly expanding and can most certainly be expanded *by advertising* we shall do when we have clear title to the sources which we have developed and claimed.

There can be no right or profit to any government administration in acts that stifle or curtail such a legitimate enterprise as this one that has been so far retarded by an unjustifiable protest and a biased decision.

The sooner the title to these claims is cleared, the better for all concerned, and remember that *this is our sole livelihood and our old age security created by our own labor and investment from untouched natural resource.*

The Forest Service never spent 10 cents of the taxpayers money upon this land which was nothing but an unauthorized garbage dump along side the road when I claimed it and cleaned it up personally. The local men were very glad to see access made for fire protection. This mountain has been very completely burned over in the past.

We invite you to send a *qualified mineral examiner* from the Bureau of Land Management to examine the property and to verify our statements if there are any further questions.

Mr. Wood did not examine the project and has a very dim picture in his mind of the project as a whole based primarily upon evidence presented by *the contestants witnesses* in regard to building stone.

Building stone was an obvious unprocessed material that could be used from the start to pay bills and carry on development. The claims were established under the Placer Law covering building stone. We state here and our records show that 80% of our sales to date have been of processed materials although we continuously produce and sell building stone.

In Southern California alone, there is a great and expanding industrial market for our products.

This is the only sizeable bona fide quartzite quarry in southern California or in the western part of the United States.

These men testifying at the hearing gave only a few hours of thought to this project. I have given ten years of my life to this effort and am more convinced than ever that it is good in every respect. You are dealing here with an honest claimant who has set forth true facts in this appeal.

This land is waterless except for spring rising in the bed of Baldwin Lake and sinking into the bed of the Lake again within the borders of the claims which have all ready been validated. The water right has all ready been settled with the Forest Service and properly recorded in the County records. No Contest.

The land embraced by the claims is not agricultural land. It is not grazing land. It has no marketable timber upon it. It has been burned over in past years. It is in no way suited for development as a recreational area. It is best suited only for that which it is claimed, a Quartzite Quarry.

In reference to public law 167, the multiple use law, these claims were all established before this law was enacted and I have furnished to Bureau of Land Management and U.S. Forest Service a verified statement as required after the law was enacted claiming all existing right prior to this law.

In this particular case, the surface rights are also the mineral rights. The deposit as shown by the State Geological Report No. 31, Geology of the Johnston grade area, is the top most strata on the mountain and described as the saragosa thrust of quartzite.

In reference to Mr. Woods findings and calculations as to building stone market, he makes no mention of concrete aggregate, leach line rock, highway seal coat, pea gravel, etc., etc. and no mention of industrial uses. It is a matter of record that $1,800,000.00 worth of building permits were written in Bear Valley, San Bernardino County, Calif. in this past year, 1958. His estimates of potential market do not set forth the existing condition nor the potentialities of future market. There is no quartzite in the Los Angeles area. This alone can be a multi-million dollar industrial market as soon as we expand and advertise after our title to sources is cleared.

I quote here from California Department of Natural Resources, Legal Guide for California Prospectors and Miners, Division of Mines, Ferry Building, San Francisco, California, Mineral Information Service, Volume 5, No. 7, October, 1952. Page 9, Paragraph Discovery.

"The discovery has a technical meaning in mining. The discovery should be actual, but not necessarily of *present commercial value.* The *discovery is sufficient if it justifies a person of ordinary prudence in making expenditure of labor and money with reasonable prospect of success in developing a paying mine.*"

I also quote United States Dep't. of Interior General Land Office Lode & Placer Mining Regulations, Part 185, Title 43 of Code of Federal Regulations, Page 11, Sub-part C. Areas subject to special laws 185.33. Mining claims within the National forest, Act of June 4, 1897 (30 Statute 36) provides that any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding the reservation. This makes mineral lands in the Forest Reserves subject to location and entry under the General Mining Laws in the usual manner. (Pm 114 Circ. 430, April 11, 1922, L.D.85).

I also quote from Manner of Locating and Holding Mining Claims in California, Reprint from California Journal of Mines and Geology, Volume 44, No. 1, Jan., 1948, by A. H. Ricketts, Revised by C. A. Logan. Mining Claims within the National Forest. Page 3. "The trend of court decisions in disputes between Forest Service and bona fide mineral locators has been to *protect the miner in the full enjoyment of his* claim. He should be prepared however, to prove by definite assays, sampling and actual production records that the land embraced in his claim is not merely mineral bearing, but *is or promises to be* more valuable for mining than for any other purpose."

The above has been done to the very best of our ability before applying for patent.

On Page 4 of this same California publication, Volume 44, No. 1, Jan., 1948 under Paragraph Conflicting Locations.

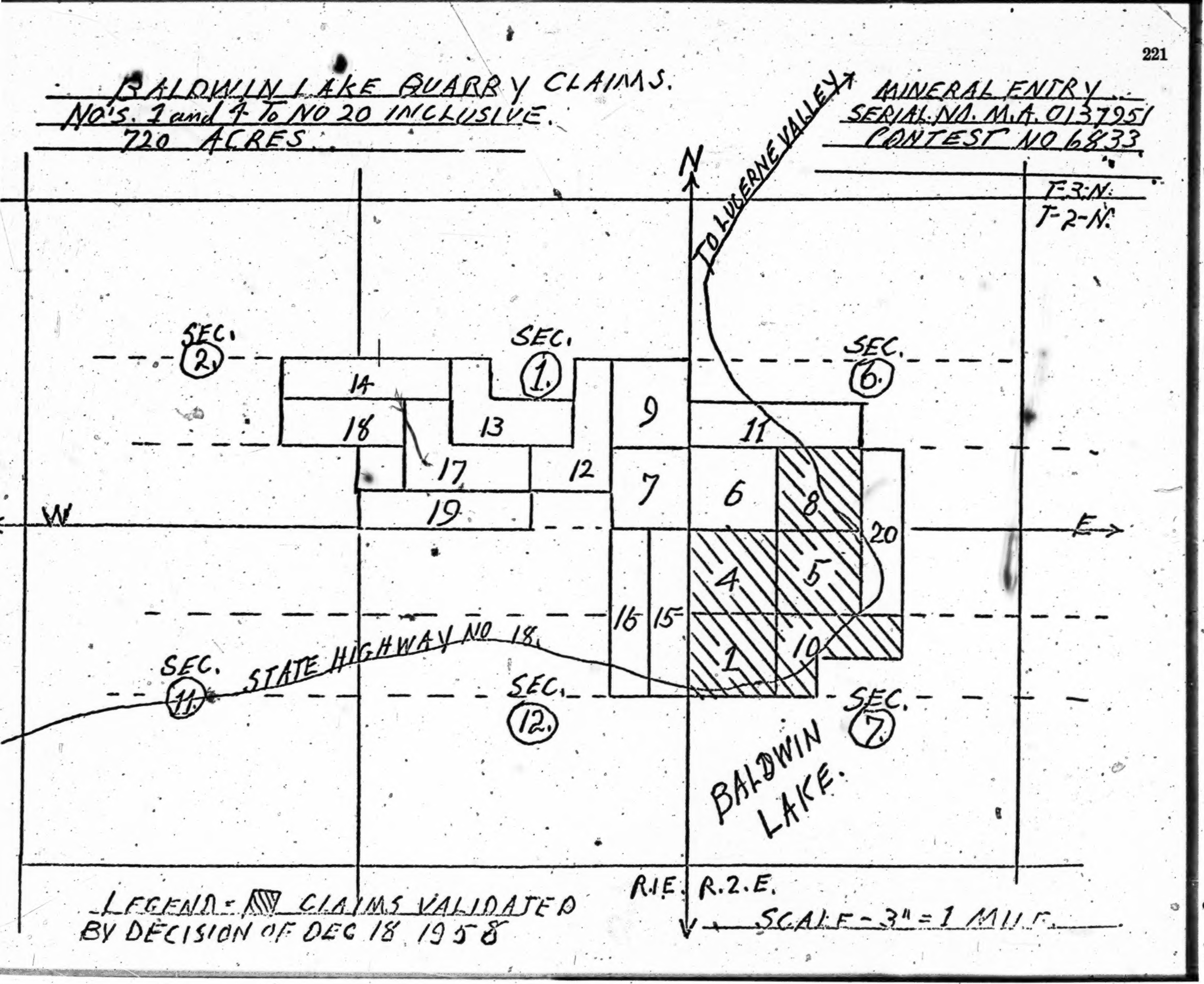
Good Faith

Good faith is an element in the initiating of mining rights under Federal and State laws, is absolutely essential to the validity of such rights, may not be dispensed with, lack of it vitiates any attempt to initiate such right.

We have acted in good faith. We expect the same good faith from the Bureau of Land Management.

In reference to the appeal from Mr. Charles R. Lawrence, of Office of General Counsel, U.S. Forest Service, San Francisco, requesting a reversal of decision of the validation of Claims 1, 4, 5, 8 and 10, all ready validated by Mr. John R. Wood.—why does one Dep't. of the government try to sabotage the efforts of another Dep't. of the Government and at the time time sabotage all of the effort of an honest citizen when each and every one of us is dependent for national and for community wealth upon constant expansion and development of natural resources to take care of ever increasing demands of an ever increasing populating and an expanding economy.

All of this is entirely against published policies of the Dept. of the Interior.


BALDWIN LAKE QUARRY CLAIMS.
No's. 1 and 4 To NO 20 INCLUSIVE.
720 ACRES.
MINERAL ENTRY
SERIAL NO. M.A. 0137951
CONTEST NO 6833
TO LUCERNE VALLEY
N
T-3-N.
T-2-N.
SEC. 2
SEC. 1
SEC. 6
14
18
13
9
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17
12
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W
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20
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16
15
1
10
STATE HIGHWAY NO 18.
SEC. 11
SEC. 12
SEC. 7
BALDWIN LAKE.
R.1.E.
R.2.E.
LEGEND - ▨ CLAIMS VALIDATED BY DECISION OF DEC 18 1958
SCALE - 3" = 1 MILE

As to Mr. Lawrence's figures as to my profits and losses, in regard to my own pioneering work upon these claims, they are absolutely meaningless. Mr. Lawrence's calculation of profit has been made on a formula unheard of in any new business enterprise. No business can expect to recover its capital expenditures for machinery, buildings, roads and necessary production improvements and show a profit from sales *while creating* the facilities to produce their product. This is what we have done during the past ten years.

The minute I entered the room where the hearing was held on Sept. 16, 1958, in San Bernardino Federal Building, the people I saw at that open hearing caused me to approach Mr. John R. Woods before the hearing started and ask him if I had to testify as to all my business affairs and contacts in the presence of people I know were at that hearing for no reason except to make capital of any information they could gather at the hearing. I requested that I be allowed to write and forward data to him after the hearing was closed. I did so and a copy of my letter to Mr. Wood is included to you with this Notice of Appeal.

I simply say this of Mr. Lawrence's statement as to my overwhelming loss in my business enterprise, I do not owe one thin dime to anyone. I have accepted no financial assistance from any private person or government agency. The equipment I have on the premises is *all* paid for; the improvements are paid for. The opportunity grows daily. Work and wages have been created and paid to others. By no stretch of the imagination can this be called an unprofitable enterprise with today's high costs and numerous mortgages against almost everyone and every business you look at.

I testified at that hearing under constraint because of very adverse witnesses both of the contestants and of other private persons.

There is no real basis for invalidation of any single one of the claims in the group. They are all entirely valid. There is no fraud.

Yours very truly, Alfred Coleman.

AC/mmm

ALFRED COLEMAN
P.O. Box 322
Big Bear City, Calif.

January 16, 1939.

NOTICE OF APPEAL AND REASONS FOR APPEAL

I herewith certify that I have power of attorney to act for my wife in all matters pertaining to this patent application.

Attached find:

(1) Reasons for appeal
(2) Filing fees:

Money Order 12-59, 410,597	$ 5.00
Money Order 12-59, 410,637	$60.00

(3) Plat of claims validated by hearing examiner
(4) Plat of claims invalidated

Exhibit A—Answer to protest in Contest 6833.
Exhibit B—Copy of letter to Mr. Wood, hearing examiner, after receiving transcript.
Exhibit C—Copy of my letter dated 1/16/59 to Mr. N. F. Kiel, Manager, Bureau of Land Management, Los Angeles, Calif.

Received in Appeals Office January 26, 1939.

Alfred Coleman.

Office of Hearing Examiner, Sacramento, Served By Certified Mail.

Return Receipt U.S. P.O. 57178. Office of General Counsel U.S. Forest Service Served by Certified Mail U.S. P.O. 57179.

Alfred Coleman.

P.O. Box 322,
Big Bear City, Calif.
January 16, 1959.

Director,
Bureau of Land Management,
Washington, D.C.

Dear Sir:

In answer to Mr. Lawrence's appeal, my husband has an engineering back ground or would never attempted this venture.

For the past ten years he has spent his entire time on this project and it has been our sole livelihood—is it fair to try to take away a person's livelihood after so long an honest and sincere effort? Until recently this was a one man operation and with no sales effort we have managed to maintain a modest home and live debt free.

It has just now reached the point of great potentiality where we can begin advertising and produce and have the additional assistance of E. J. McClellan and his staff who now have a lease on part of this property. There is a definite market for this product, as proved by our sales books (not made thru Mr. Burman).

Prior to 1953 Saragosa Quartzite was practically unknown. In this year special Report 31 was written on the geology of the Johnson grade. It takes time and advertising to educate the public to such a product.

We are somewhat at a disadvantage by not having legal counsel, but trust you will be fair in understanding the hardships endured to reach this point.

Yours very truly, Edna W. Coleman.

Copy of Development Journal

ROUGH SUMMARY OF ANNUAL EXPENDITURES

Baldwin Lake Quarry Claims Nos. 1 and 4 through 20 inclusively.

by Alfred Coleman

February 19, 1949

1. Filed on No. 1.
2. Started buying machinery to set up in quarry in March.
3. Hauled up materials for tool house and one room 8 x 16 cabin last week in April, 1949.
4. Leveled cabin site and erected cabin, first week of May, 1949. Approximately $500.00.
5. Hauled up rock crusher and materials from San Pedro for screening plant about last week of May, 1949. $800.00.
6. Water level in Baldwin Lake dropped sufficiently by 1st of June, 1949, so that source of spring across highway in front of Claim No. 1, could be located and cleaned out. Amended location of Baldwin Lake Quarry No. 1, to cover the outlet of this spring to provide water for future operations on the claim.
7. Rocked in the outlet to the spring on Quarry No. 1 to keep cattle from contaminating the outlet about third week of June, 1949. $150.00.
8. Also set rock crusher on excavated and timber foundation about 2nd week of June, 1949. $150.00.
9. Cleaned off face of main rock glide adjacent to rock crusher site and graded and terraced roads below rock crusher. $300.00.
10. Dug out boulders in roads from highway to crusher and cabin and terraced more ground around cabin during June. $150.00.

End of first assessment year.

July—hauled up some material to build machinery shed and garage. $200.00.

Filed on Quarries 4 to 9 inclusive.

11. Graded and dug a new road for about 900 ft. up mountain to make access to fine slide of color rock for fireplace work in August, @ $1.50 per yard. $450.00.

Brought down 24 yds. of fine rock from this slide for sale. Also hauled up 8,000 ft. of lumber to be used in building garage and machinery shed. $120.00 per thousand. $960.00.

12. Worked on car and truck and tractor and arranged for a new roof on San Pedro home.
13. Graded and terraced building site for machinery shed and garage, latter part of August. $75.00. Dug tank site above crusher level and hauled up power saw, roofing materials, insulating material and wall board for cabin and water barrels for reserve water supply. $200.00.
14. Rigged up rotary hand pump for fire fighting and to pump spring water into barrels. $25.00.
15. Built up a stock pile of foundation rock during time I was excavating and grading for cabin and garage. Also built a stone boat out of 6ft. snow bucket for dragging rocks behind the tractor. 1st week of September.

Contest 6833

Coleman

3/19/58 Copy of Ans. of contestee to Supply for 2 photo copies.

(Check contest No. 6832 for the special instructions letter for the State Supervisor.)

(See *contest* folder for St. Supr. memo 2-6-58 on procedure.)

Allegations of complaint:

1. . . . lands are non-mineral . . .
2. minerals have not been found in sufficient quantities.
3. {$500 has not been expended on Baldwin Lake {Quarry Claims Nos. 7, 9, 11 to 19 incl. (11 claims) (#1, 4, #5, #6, #8, #10, #20 O.K. as to improvements)

When case ready for transmittal to Hearing Examiner: To consist of the following:

Fn. 4-1333 (mimeo copies being prepared).

1. Orig. copy of application.
2. Copy of complaint and evidence of service.
3. Contestee's answer.
4. Status reports, maps, or other documents in L.O. file which would be helpful to the Examiner.
5. 11 claims 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19. Do *not* include copy of field exam. report.

16. Got out and loaded 6 Yds. of color rock to face Newport High school fireplace. $65.00.
17. Built fireplace for John Cooper, Sylvan Rd., Big Bear City, to be used to advertise our rock. Terms: Time and Material or Labor and Material. $650.00. 2nd and 3rd weeks of September, 1949.
18. Used water from the spring every day since May 3, 1949, approximately 50 gallons per day, for domestic use and washing color rock.
19. Total Development Cost for 1949, $3,565.00.
    Plus interest on loan, filing fees, building expense on garage and machinery shed, $200.00. To January 1, 1950.

Dug snow with tractor fall and winter of 1949 to end of February, 1950.

Most of above work on Claim Nos. 1, 5 and 10, except stock piling building rock and exploration and location work on other claims.

March 1, 1950

20. Built 1,750 Ft. of road at higher level to make access to rock slides higher up on the mountain, crossing rock slides not previously made accessable at a higher level. Approximately 583 yds. @ $1.50 per yd. $874.50.
21. April, May and June.
    Item 1. Terraced area 75 x 250 ft. Approximately 3,750 cubic yds. rock and dirt @ $1.50 per yd., $5,625.00, for stock piling and loading operations. End of 2nd Assess. year.
    Item 2. Surveying on claims No. 4, 5, 6, 7, 8, 9 for road to ledges above slides to reach main deposits of Quartzite. 1½ miles of road—6 switchbacks. $300.00.
22. Purchased scrap steel for machinery development and repairs, about 1,500 lbs., plus hauling. Sheet metal for bunkers $200.00 and angle and T-Iron for grizzly and framework.
23. Purchased International C 60 and equipped for rock hauling. $2,000.00.
24. Worked intermittently at rock masonry and in winter dug snow with tractor until February, 1951.

1950 Improvements—$6,216.50, plus interest on loan, filing fees, depreciation on car, tractor and truck, $665.00.

February 1, 1951.

Started building road from Claim No. 6, on ridge down through Claims 8, 5, 4, 10 to Claim No. 1, after completing survey through Claim No. 7 and No. 9. 2 miles of road.

25. Surveying—$400.00. Swamping and brushing out road bed, $450.00.
26. Grading approximately 2 cubic yds. for each linear yard of road. Total 3,500 cubic yds. @ $1.50 per yd. rock and dirt. $5,250.00. End of third assessment year.
27. Built heavy two wheel Tip Tilt trailer to pull behind tractor to aid in getting out building rock for sale. $300.00. 3 ton capacity 900 x 20 tires.
28. Blasting boulders and stumps and ledges from road bed, $500.00. Labor, powder caps and gasoline, included.
29. Graded entrances at east and west ends of highway frontage to Claims No. 1 and No. 10 for easy access for trucks hauling heavy loads. Approximately ¼ mile of road, $350.00. Plus 600 cubic yds. parking space, $700.00.
30. Finished 15 cubic yds. of permanent rock masonry with two pools and overflow gates at spring to prevent contamination of spring water by lake water at high water level. Masonry at $1.00 per cubic ft. $405.00.

    1951 Improvements $4,640.00, plus depreciation on car, tractor, No. 1 and No. 2 trucks, trailer, filing fees, interest on loan $895.00.

    Intermittent labor at masonry work, spring and fall of 1951. Dug snow with tractor winter of 1951-1952.
31. February, 1952.

    Widened and regraded Claim Nos. 1, 10, 4, 8 and 5. Blasted and filled five turns in quarry road, approximately $250.00 each tractor and labor cost, Claims No. 4 and No. 6. $1,250.00.
32. Built 600 ft. road from No. 5 turn to loading point under ledge of color rock @ $1.50 cubic yd. 1,200 yds. rock and dirt $1,800.00.

33. Blasting and grading at landing point under ledge of color rock, $300.00.
34. Grading and terracing for more space on Claim No. 1 to stock pile and sort ornamental rock. 600 yds. of rock and dirt @ $1.50—$900.00.
35. Grading and terracing for better access to lower rock slide on Claim No. 4, to get out and sell lateral rock or building stone. 200 yds. of rock and dirt @ $1.50—$300.00.
36. Dug trench for 75 ft. lateral drain and hole for 4′x10′x5′ deep septic tank and hauled 30 yds. lateral rock for septic tank drain line. $150.00.
37. Bulldozed 650 running yds. 3 yds. wide of road bed to gravel pit in Claims No. 10 and 5. Approximately 650 cubic yds. @ $1.50 yd., $975.00. July 1, 1952.
End of 4th assessment year.
38. Excavated 15 cubic yds. quartzite gravel for location work on Baldwin Lake Quarry No. 20. Dragged with tractor and hand graded 650 yds. of access road through Claims No. 10 and 5 to gravel pit in Claim No. 20, as assessment work for year 1952 to 1953, August 1 to 15, 1952. Value $400.00.
39. Purchased 50 ft. of drain tile for septic tank lateral. Cost delivered $15.00.
40. Completed laying lateral 50 ft. drain tile and rocking in 25 additional ft. and covering same with tar paper and fill rock. $25.00.
41. Graded workshop and machine shed site and driveway to same moving 250 yds. rock and dirt. $375.00.
42. Filled and graded site for truck loading dock in front of shop driveway. 75 yds. rock and dirt, $112.50.
43. Surveyed for road and ramp above crusher site to feed material to crusher. $25.00.
44. Built 2″ classifying grizzly of 2½″ x ⅜″ T Bar Steel and 4″ x ⅜″ angle iron. Cost $75.00.
45. Built 4″ classifying grizzly of 2½″ x ⅜″ T-Bar Steel and ¾″ x 4″ steel bar stock. Cost $75.00.
46. Bought 1 horsepower 110-220 volt single phase motor for driving tool grinder and table saw. $75.00.
47. Overhauled International pit truck motor. $150.00.
48. Overhauled Ford tractor motor. $150.00.
49. Bought 32 ft. vitrified 4″ tile for sewer line to septic tank, $15.00.

50. Also, vitrified Tees L's and vent Tees. $12.00.
51. Built 3 compartment septic tank 10'x4'x5' deep—1,500 gallon capacity of rock masonry and concrete. $250.00.
52. Hired H.D. 9 Allis Chalmers bulldozer with operator to widen turns in existing road built in 1951, through Claims No. 6, 5, 8, 4 and 1, and also to improve grades —Frank Day Co. of Big Bear. $300.00.
53. Supervising bulldozer work. $50.00.
53. Bulldozed approximately 1,000 yds. of new road through Claims No. 9, 11, 12, 13, 14, 17, 18 and 19. $100.00.
55. Laid 35 ft. sewer line from septic tank to office and shop building. $75.00.
56. Regrading and cleaning up quarry road after bulldozing, 3 days tractor time. $144.00.
57. Blasting boulders and rock outcrops in road to quarry. $75.00.
58. Skip loaded 200 cubic yds. dirt and rock around and over septic tank and lateral drain. $150.00

December, 1952

59. Built angle dozer and grader blade for C 60 International truck for roads maintenance, grading and cleanup work in quarry and on quarry roads. Value, $450.00.
60. Turned in 1948 4 cylinder Ford tractor as down payment on 1953 6 cylinder Ford tractor used for quarry operation. Additional cost, $1,650.00.
61. Bought buzz and falling saw 36" attachment for Ford tractor power take off, to saw up dead and down material on claims and clear roads for hauling. $400.00.

1952 Total, $10,824.00.

January, 1953.

62. Excavated 250 yards. @ $1.50 per yd., of overburden from gravel pit on No. 20 claim to clear pit for further producing of quartzite gravel and sand. Value, $375.00.
63. Opening gravel pit. Excavated 229 cubic yds. of overburden and quartzite leaching material from Baldwin

Lake Claim No. 20. Material loaded on trucks and delivered to two jobs @ $3.50 per yd. $801.40.

64. Excavated 50 yds. material from shop building site and used same to level approach to shop building site and around septic tank. Value @ $1.50 ~~per yd.~~ $75.00.
65. February, 1953.
Hauled 250 yds. Item No. 62 above to No. 5 switchback for fill dirt. Value, $375.00.
66. Moved 1,000 yds. rock and dirt on grades and switch backs up to Claim No. 6, in cleaning and widening access road for truck hauling and better access to all claims. Value @ $1.50 per yd. $1,500.00.
67. March, 1953.
Rebuilding C 40 Int. 2½ ton truck to increase production of color rock. Four recapped tires 825x20 @ $45.00 each, $180.00.
Welding and labor, April 6th—$78.50.
68. Four 8.25x20 tires for C-60 Int. truck, $175.00.
69. New bed—tip tilt dump, winch mounting for C-40 Int. truck $100.00.
70. April, 1953. Completed loading loop in road at quarry face on Claim No. 5. Blasted and cleared 400 ft. length of road on rock slide, 10 ft. wide. Claim No. 5. $300.00.
71. April, 1953. Excavated 40 cubic yds. of quartzite gravel from pit on Claim No. 20 to fill order at Big Bear High School. Sale. $50.00.
72. Built stake body for C40 Int. truck to haul cordwood sawed from dead trees along route of access road to all claims. To eliminate fire hazard in forest from dead and down trees and to make easier access to quartzite deposits along this access road. Value, $150.00.
73. Built safety latch for buzz saw table and guard for buzz saw. Value, $25.00.
74. Welding and repairs to old skip loader on new Ford tractor for quarry use. $60.00.
75. Mounted 12 ton Tulsa double drum winch, A-frame and controls on C-40 Int. truck to load large blocks of quartzite to haul in to rock saws. Value, $150.00.
76. Pacific Signs Service painted signs advertising Baldwin Lake Quarry. $35.00.
77. Cleared out and opened road to quarry face on No. 6 claim. Tractor, truck and saw time; $200.00.

78. September 1, 1953. Completed loading loop at quarry face on No. 5 claim. Truck, saw and tractor time, $150.00.
79. Cleared quarry face and quarry loop of dead trees. $100.00.
80. Cleared and graded site for stock piling washed mortar sand, moving 75 yds. of rock and dirt. $125.00.
81. Cleared and graded site for stock piling concrete aggregate dug from gravel pit, Baldwin Lake Quarry No. 20, 25 yds. of rock and dirt. $45.00.
82. Replaced starter in quarry truck Int. C-40. $30.00.
83. Replaced 2 speed axle and universal joints in C-40 Int. truck for quarry. $150.00.
84. Bought new tires for C-40 Int. truck. 7 tires, $242.00.
85. Bought new tires for C-60 Int. truck for quarry use. 4 tires, $80.00.
86. Installed 2" galv. crossover pipe under State Highway No. 18 in front of cabin and workshop on Claim No. 10, for water supply to quarry and shop from spring on Claim No. 1. $100.00.
87. Overhauled motor on C-60 quarry dump truck. Valves, bearings, rings, gaskets, etc. $150.00.
88. Completed overhaul of 2 speed axle and drive shaft universal joints on C-40 Int. truck. $107.50.

Expenditure and Improvements for 1953, Total $5,900.00.

Bought Home Light 4 h.p. chain saw, new $400.00., October, 1953 by bank contract. Paid out January, 1954.

February, 1954.

89. Reground crank shaft, new con rod bearings, new main bearing, new sleevs, new rings, reseated valves, new valves, new gaskets, F.A.B. 1444, C-60 engine for driving crusher. Parts and labor $175.00.
90. March. Bought Gurley Mining Transit to run down old survey lines and accurately establish location of claims as to legal subdivision lines in Public Survey by U.S. Geological Survey. Transit, $207.00. (Personal property). 7 days survey work plus 10 days, $425.00.
91. April. Bulldozed approximately 750 ft. of road along

lake shore above highwater mark to make access to gravel pit in event of rising spring flood preventing use of lake bed. Tractor @ $6.50 per hr. for 3 days, $156.00.

92. May. Bought 2 new tractor rear tries, 17x20x22 ply and 2 new tubes. Value, $250.00.00
93. June. Bought and reconditioned old Buick 8 cyl. sedan for standby car at quarry. Value, $400.00.
94. July. Blasted and widened floor of quarry on No. 5 claim for purpose of better loading and maneuvering of equipment and sorting and stockpiling quarried rock. Approx. labor and powder, $300.00.
95. Excavated 28x30 ft. floor space for shop and machinery bldg. behind original building. $350.00.
96. Built rock masonry wall at west and north ends of shop excavation 240 face ft. at $2.00. Value, $480.00.
97. Lumber for shop building, $360.00.
98. Roofing material, 85 lb. felt, $40.00.
99. Set truck gates at 4 driveway entrances to quarry. Value of material and labor at $35.00 each, $140.00.
100. Repairs to Homelight chain saw and 36″ buzz saw used in clearing trees and brush for road development work at quarry, $50.00.
101. Lumber for shop building, $210.00.
102. October, 1954. 3,000 Watt, 110-220 Volt power plant, $250.00.
103. Blacksmith tools, $40.00.
104. Extended roads and working face at quarry. Labor and gasoline, etc., $250.00.
105. Extended quarry road in Claims No. 5, 6, 7 and 11 toward big meadow at 7,500 ft. level. $150.00.
106. Built hand winch and buckets for cleaning out water reservoir. Labor and materials, $45.00.
107. Excavated and casted 16 foundation holes for posts for shop and garage foundation. Labor, $60.00.
108. Built dry wall to hold bank along Diesel loading dock and along driveway to shop, $300.00.
109. Bought blacksmith blower and forge (used) $15.00.
110. Bought 4 used 900x20 truck tires, $80.00.
111. Bought battery telephone set and wiring for quarry to roadside communication, $60.00.
112. Bought used truck trailer bed, $40.00. Other trailer

parts, wheel rims, vacuum tank, booster piston, 4 900x20 tubes, $35.00.

113. Bought wrecked Buick for repair parts for quarry car. $35.00.
114. Set up frame work for new quarry shop. Labor, $50.00.
115. Cleared rock washouts on Claims No. 6 and No. 7. $100.00.
116. Extended quarry road in Claim No. 5 around S. E. of quarry ledge. $200.00,

1954 Total, $5,450.00.

117. January, 1955. Bought two 1,000 lb. Chatillon crane scales for weighing rock and reconditioned same. Value, $400.00.
118. Built scale hangers and weighing platform. $50.00.
119. Cleaned up gravel pit road and removed 100 yds. of overburden at pit. $200.00.
120. Cleaned up quarry road and improved loading space at main quarry. 5 days. $250.00.
121. Changed motors in C-60 truck and adjusted all wheel bearings. $150.00.
122. Carpenter work on new quarry shop and garage. One month, $750.00.
123. Opened new quarry face. $200.00.
124. Dynamite, etc. $25.00.
125. Repairs to power plant. $45.00.
126. Opened new roads on Claim No. 6 to new rock faces and potential source of gravity water supply, $500.00.
127. Bought new lumber to complete quarry shop and garage. $75.00.
128. Excavated foundation for base of additional retaining wall on added machinery shed 10x28 ft. and laid base of wall 20 ft. long. Also cast concrete foundation pads for building and rump timber supports to 2nd floor shop. $200.00.
129. Bought used bridge timbers for building car and truck ramp and repair pit. $75.00.
130. Extended quarry road in Claim No. 5 around S. E. of quarry ledge. $100.00.
131. Widened and graded quarry floor in Claim No. 5. $150.00.
132. Extended upper access road by blasting and loading

on Claim No. 7 westward toward Claims 15 and 16. $300.00.

133. Cleared road across meadow on Claim No. 6 west toward Claims 15 and 16. $100.00.
134. Cleared access road on Claim No. 6 toward proposed gravity water site on Claim No. 4. $200.00.
135. Bought slab lumber and edging from saw mill for use in construction of new shop building. 3 loads. $60.00.
136. Dynamite caps, $7.50.
137. Completed roof and frame of new machinery shed 10x28 ft. $200.00.
138. Bought two 550 gallon water tanks for water system. $120.00.
139. Bought toilet bowl, toilet tank, medicine cabinet, wash bowl, bathtub, kitchen sink and laundry tub and all fittings and shower connection to complete bathroom and kitchen. $275.00.
140. Bought new adjustable Briggs and Stratton carburetor for power plant to cut down gas consumption and eliminate fire hazard from hot carbon sparks. $30.00.
141. Two truck cushions and two folding seats for house. $20.00.
142. Bought two 750x16-8 ply used tires for front of tractor. $20.00.
143. Bought one 550 gallon tank for water system, $60.00.
144. Bought one 20 gal. tank for water system, $7.50.
145. January, 1956. Hung 4 large 5 ft. doors on new garage and shop. $80.00.
146. April. Poured concrete slab for tank and generator room behind house. $50.00.
147. Jacked up original building and set masonry foundation under it. $200.00.
148. Built storage shelves upstairs and down in new garage and shop. $150.00. Hung upstairs door in shop and fitted windows in shop.
149. Dug fresh water drain from house through west driveway and rocked it in. $50.00.
150. Rock faced masonry foundation on west side of house. $50.00.
151. Excavated foundation and hauled fill for concrete porch on south and east side of house. $50.00.
152. Built rock wall for porch on west and south sides of

house and rock steps at northwest end of porch. $125.00.

153. Poured concrete slab floor on porch on west and south sides. $75.00.
154. Bought 3 used tires for C-60 truck. $47.50.
155. Tightened connecting rod bearings on C-60 truck. $18.00.
156. Hand picked and barred loose rock from all entrances and access roads on Claims No. 20, 1, 10, 4, 6, 7 and 5 and repaired small washouts. $200.00.
157. Repaired lighting system and brake system on C-60 truck. $20.00.
158. Built 5 rock and concrete foundation piers for floor support under quarry office and house. $25.00.
159. Bought 200 ft. flex conduit, 1,500 ft. electric wire, 12 switches, 8 octagon fixture boxes, 16 outlets, 32 outlet and switch plates, 100 flex connections, one yard light fixture and 150 watt bulb. Total, $125.00. For wiring quarry shop, office and bunkhouse cookshack, etc.
160. Cleared 100 ft. of road to new quarry face on Claims No. 11 and 5. $150.00.
161. Cleaned and widened quarry floor on Claim No. 5 to make more maneuvering space for loading. Labor $200.00. Explosives $20.00.
162. Installed rough plumbing for water sewer, etc., in quarry bunk house. $250.00.
163. May, 1956. Added frame and roofing and flooring to quarry residence for two additional bedrooms and bathroom. $250.00.
164. New quarry tools, wedges, hammers, blacksmithing, etc. $100.00.
165. June and July. Built 11 rock and concrete piers under portions of building addition for permanent floor support. $55.00.
166. Roofed over generator and tank room connecting shop building to house. $50.00.
167. Built timber supports for overhead water storage tank in shop building with miscellaneous shelves in shop for storing equipment tools and supplies. $25.00.
168. Installed wiring for light and power in shop and residence, plus 10 light fixtures and breaker box. $200.00.
169. Faces rear and roof peaks of shop building with peeled pine siding. $50.00.

170. December, 1956. Bought blacksmiths drill press for shop. $50.00.
171. Bought Stanley safety saw, 8″ electric, 110 volt, for construction work on quarry. $100.00.
172. Bought Thor ½″ electric drill for shop repair and construction work. $65.00.
173. Bought 1½″ gasoline driven water pump for water system. $110.00.
174. Bought used windows and doors for quarry residence. 4 doors, 8 windows. $100.00.
175. Cleared dead and down trees along main access road in Claims No. 7 and 6. $100.00.
176. Bought small tools for shop. Drill chucks, hole saw, automotive tools, valve lifter, reseater, etc. $50.00.

January 1957.

177. Repairs to Nash car and tire recapping. $100.00.
178. Completed overhaul of generator unit. $100.00.
179. Ground valves and tightened bearings and repaired tachometer and carburetors on Ford tractor skip loader. $100.00.
180. Built bridge truss and three cantilever trusses under roof of new living room for better support of ceiling in same. $40.00.
181. Cut in new window in south wall of upstairs workshop. $10.00.
182. Built wood heater for shop. $15.00.
183. Installed hot water heater in quarry living quarters. $125.00.
184. Installed Servel refrigerator in quarry living quarters. $150.00.
185. Completed installation of propane gas to living quarters and generator. $175.00.
186. May, 1957. Completed installation of hot and cold water system to fixtures in living quarters with water storage tanks. $450.00.
187. Completed installation of sewer drains for waste water and sewer gas vents. $200.00.
188. Completed bathroom and bedroom ceiling in quarry living quarters. $75.00.
189. Built 3/4 ton two wheel trailer and hitch for light hauling for water and quarry business. $200.00.

190. Renewed quarry tools. Wedges, bars, hammers, etc. $100.00.
191. Cleaned quarry road of rock slides and falls. $75.00.
192. Graded truck turn around back of shop. $150.00.
193. Regraded highway approaches to quarry. $100.00.
194. Blasted stumps and boulders from quarry road through Claims No. 6 and 7, and filled holes. $100.00.
195. Concrete poured shop area 1,200 sq. ft. $600.00.
196. Engine overhaul on 1949 Nash car. $100.00.
197. Blasted north shoulder of rock cut in Claim No. 7, for distance of 200 ft. and blasted high centers in this stretch of road. $150.00.
198. Cut in 3 new windows and frames and two doors into new kitchen in quarry residence and installed kitchen sink and cabinet framework. $150.00.
199. Installed two windows and frames in quarry residence living room. $30.00.
200. Installed combination propane and wood stove in kitchen with new fireproof smoke stack. $100.00.
201. October, 1957. Installed Cellotex ceilings in quarry residence living room and kitchen. $150.00.
202. Extended quarry road 150 ft. on No. 4 Claim westward toward excavation site of new quarry face in hope of developing gravity water. $275.00.
203. March, 1958. Extended quarry road north 300 ft. to new northeast quarry face on Claim No. 8. $300.00.
204. Graded site for quarry tool house and ground for screening and classifying machinery. $400.00.
205. Built fireplace in quarry house for heat and to advertise rock. $1,500.00.
206. Completed office in quarry house. $250.00.
207. Started work on kitchen and living room in quarry house.
208. Rebuilding quarry trucks. $250.00.
209. Rebuilding quarry car. $200.00.
210. Repairs to tractor. $75.00.
211. Lined kitchen walls with knotty pine and built kitchen cabinets and sink drain boards in quarry residence. Partially completed. $200.00.
212. May, 1958. Repaired trailer water tank and water storage tanks. $50.00.
213. Sliding door and frame between kitchen and living room. $22.50.

214. Door and frame between living room and hall, $22.50.
215. Graded road below shaker screen for truck loading, $50.00.
216. Widened road and turns through Claims No. 10, 1, 4, 6 and 8. $250.00.
217. June 1, 1958. Set 30″x8ft. stand pipe at spring on No. 10 claim for pump site and suction for quarry water. $75.00.
218. Bulldozed 400 yd. stockpile of lateral rock on Claim No. 10 for processing and delivery to customers. $600.00.
219. June 24, 1958. Installed 600 gallon water storage tank at screening plant for washing rock. $75.00.
220. Installed 2″ centrifugal water pump for booster from above tank with ½ H.P. motor. $100.00.
221. Installed 720 ft. of 2″ aluminum water line from spring pump to water storage tank at screen site. $400.00.
222. Installed 5 H.P. gasoline driven water pump at spring in Claim No. 1. $200.00.
223. Installed 4x10 vibrating screen and motor and 5,000 watt portable generating plant for screening leach line rock. $2,000.00.
224. July, 1958. Purchased new John Deere tractor for material handling and excavating. $7,000.00.
225. Purchased new G.M.C. dump truck for material handling. $6,000.00.
226. Purchased 4,000 ft. new lumber for classifying plant erection. $500.00.
227. Poured concrete foundation with ready mix for screens, grizzly and conveyor. $200.00.
228. Finished fireplace chimney. $100.00.
229. Bought heavy No. 10 wire extension cord for driving power tools from generator. $17.39.
230. Bought 50 ft. 2″ fire hose and connections for fire pump. $25.00.
231. Cleaned up all surplus scrap iron from quarry hauling. $25.00.
232. 4 gallons reinforcing oil for painting quarry building. $12.00.
233. Exchanged old 1 H.P. G.E. shop motor for new 1 H.P. motor. $25.00.
234. December, 1958. Used tractor to grade settling pond

for plant to save silt for garden and reuse plant water. $150.00.

235. Used tractor to level more ground for stockpiling and maneuvering equipment at No. 1 quarry face on No. 5 Claim. $50.00.
236. Graded out washed sand storage pit. $100.00.
237. Graded out more space for stockpiling classified rock and gravel below screen plant. $250.00.
238. January, 1959. Built car port 10 ft. x 32 ft. on west side of house for vehicle shelter in winter. Labor and material, $250.00.
239. Completed porch roof on south and east side of building for dry fire wood storage and more shelter for building in winter. Labor and material, $250.00.
240. Blasted 100 tons of building stone for stock and sale. Labor and material, 14 charges, 55 sticks. $150.00.
241. Bought material to build 18"x27 ft. portable loader conveyor, including new engine and speed reducer clutch combination. Material only, $600.00.
242. Put redwood siding on south and east walls of quarry building. Labor and material, $225.00.
243. Made plastic storm windows for building. Labor and material, $40.00.
244. Removed old garage doors from front of building and replaced with windows. Labor and material, $150.00.
245. Bought new kerosene heater and new Aladdin lamp for auxiliary heat and light. $40.00.
246. January 21, 1959. Labor building portable loader conveyor, $50.00.
247. Extended eave on shop doors. Labor and material, $30.00.
248. Repaired roof over shop and residence. Labor and material, $40.00.
249. Planning setup of crusher plant. $50.00.
250. Quarry car repairs, con rod bearings, valve grind, head gasket, engine tuneup, etc. Labor and material, $75.00.
251. New fire pump connections and set up. Labor and material, $40.00.
252. Rock faced porch and building. 6 porch pillars of rock and cedar logs, pouring wood storage slab on porch. Labor and material, $450.00.

253. Finished wood work on kitchen and living room walls, $150.00.
254. January 17, 1959. Appeal to Director of Bureau of Land Management, Washington, D.C. Legal work and fees, $132.02.
255. Forging quarry tools and new stone sledge and new hammer handles. Labor and materials, $40.00.
256. Welding expense on new portable conveyor, $200.00
257. New Briggs Stratton engine for portable conveyor, 9 H.P. ball bearing, $145.00.
258. Belting for portable conveyor, $75.00.
259. Roller track for portable conveyor, $75.00.
260. Pulleys and drive belts, bearings, drive shaft, worm gear, etc. for portable conveyor, $100.00.
261. Steel for fabrication of portable conveyor, $75.00.
262. Running gear tires and caster wheel for portable conveyor, $75.00.
263. February 10 to March 18th. Completely regraded quarry entrance roads and driveways on premises and coated same with fine quarry screenings and then a 2″ coat of pea gravel. Approximately 100 cubic yards of surfacing materials dumped and spread by bull dozer and then hand raked and picked clean of coarse rock, for better traffic and truck access on premises. $600.00.
264. Reset crusher on new steel and rock masonry foundation, $800.00.
265. Installed one 48 ft.x16″ conveyor to handle crushed materials from crusher to hopper for 60 ft.x16″ convey to screening plant. $3,000.00.
266. Excavated large storage pit for washed sand. $400.00.
267. Graded out new stock piling area for screened rock products at discharge level of screening plant, $100.00.
268. Graded out new stock pile area at crusher level to stock crushed rock. $25.00.
269. Graded out area around new crusher site to build hopper and belt feed to crusher, $10.00.
270. Built rock retaining wall in crusher pit. $100.00.
271. Built rock and concrete retaining wall above crusher hopper to retain stock pile of crusher material above crusher hopper, $350.00.
272. Installed new steel hopper above crusher feed belt, $250.00.

273. Installed new 8″ grizzly above crusher to separate building stone too large to go through for crusher feed. $100.00.
274. Graded out 500 ft. of new quarry access road on No. 5 claim, with turn around loop for trucks at new quarry face. $250.00.
275. Regraded and widened truck turns at six different levels on quarry. $300.00.
276. Regraded and enlarged catch basin on No. 10 claim for catching silt and water from quarry operations, $50.00.
277. Surveyed new access roads to new quarry faces and marked same for grading. $200.00.
278. Set up pumping equipment to flush silt and decayed matter out of spring basin to insure clean drinking water. $25.00.
279. Fitted glass upper panels in two new 1¾″ doors and also fitted locks etc. and painted new doors with two coats of reinforcing oil. $15.00.
280. Laid plastic tile on kitchen floor, $25.00.
281. Laid plywood and tar paper on living room floor, $20.00.
282. Fitted hardware on all kitchen cabinet doors, $15.00.
283. Installed new steel sand washing screw conveyor for aggregate plant, $650.00.
284. Surveyed site for new catch basin below highway and for fresh water pumping basin and ditches from spring sites northeast and southwest of new water basin site, for permanent water supply and water conservation for quarry operation. $50.00.
285. Installed 10 ft.x16″ belt feed from grizzly hopper to feed crusher with chain drive, $500.00.
286. Additional fitting and acetylene cutting on belt loader, $50.00.
287. Bought new John Deer wheel tractor with power take off for intermittant crusher drive and to load trucks $4900.00.
288. Bought new tracks for John Deer tractor with rock pads $600.00.
289. Welding expense to complete 25 ft. portable conveyor $75.00.

290. D. C. bulldozer rental. Digging diversion ditch for running water from above plant and cabin site and hole for 20,000 gal. domestic water reservoir $25.00.
291. D. C. bulldozer rental. Stock piling rock for crusher feed 400 tons $100.00.
292. D. C. bulldozer rental. Grading new 50 x 250′ stock pile area $300.00.
293. Masonry. Building rock retaining wall under screening tower 10′ x 40′ x 2′ thick—$400.00.
294. Digging out washed sand pit storage bin 50′ x 75′ for sand stock pile $150.00.
295. Setting up classifier and washer for quartzite fines $900.00.

OFFICE LOCATION ON HIGHWAY OPPOSITE BEAR CITY AIR PORT

Section C. Evidence

W. L. Peery & Wilma E. Peery
Real Estate . . . . Insurance
P. O. Box 122—Phone 4197
Big Bear City, California

BEAR VALLEY
SALES – EXCHANGES
• NOTARY •

AMERICAN FORE
LOYALTY GROUP
ALL COVERAGES

To whom it may concern: April 15, 1959

Appraisal

This is an appraisal of existing values of property development, buildings and equipment on and for the production of the mineral claimed on the Baldwin Lake Quarry Mining Claims—#1, and #4 thru #20 inclusive. Consisting of 18-40 acre co-located Mining Claims embracing a total of 720 acres.

In establishing the reasonable evaluations herein set forth, current market prices of similar new and used pieces of mining equipment were carefully checked. Existing grading, terracing and road work costs in this appraisal are estimated lower than prevailing rates in this locale would indicate.

# 1—Combination residence, repair shop, and garage, including shelter for electric generating plant, and attic storage space. Over all square footage 2150, of which 800 Sq. Ft., represent 2 bedroom dwelling. 4 inch thick concrete slab throughout shop area. Total depreciated value.....	$ 8,000.00
# 2—Screening Tower Storage Shed. 340 Sq. Ft. Value.....................	200.00
# 3—Screening Tower with double deck 4 Ft. by 10 Ft., vibrating screen, 60 Ft., by 18″ trough conveyor, steel hopper coverer by	

6 inch by 8′ by 10′ steel grizzly. 10,000 K. W. Merrit And Okefe gasoling driven generator, and 5 H.P. 110 Volt electric motor drive with shelter.	
Value....................	7,500.00
# 4—Rock crusher. 10 by 16 by 26 inches, with 16 inch belt feeder, steel hopper 8 inch by 7 feet by 9 feet grizzley. Gasoline engine drive, masonry and steel foundation.	
Value....................	3,000.00
# 5—48 Ft., trough conveyer loader for crushed material to trucks or to ore screening tower.	
Value....................	3,500.00
Sub Total..................	$22,200.00
# 6—Sand Screw Conveyor installation for washing Mortar and Concrete Sand from Quartzite fines.	
Value....................	$ 900.00
# 7—Heavy Duty G.M.C. Dump Truck. New.	
Values....................	6,000.00
# 8—Chevrolet 5 yard Dump Truck. Used.	
Value....................	3,000.00
# 9—John Deer Track Tractor ¾ yard Bucket. New.	
Value....................	7,000.00
#10—John Deer Skip Loader ¾ yard Bucket. New.	
Value....................	4,900.00
#11—Ford—Funk Conversion 6 cylinder heavy duty ¾ yard bucket, Skip Loader with Dozer blade, Scarifying teeth, Snow Bucket and 36 inch power saw attachment, and 16 Ft., Crane.	
Value....................	4,000.00

#12—International 2½ Ton Quarry dump truck —equipped with 12 Ton power driven Tulsa winch. Value....................	1,500.00
#13—International 10 Ton Quarry Dump Truck. Used. Value....................	2,000.00
#14—25 Ft., power driven Ornamental Rock Loading Belt Conveyer. Value....................	2,000.00
#15—Emergency gasoline driven Homelight used pump for Fire fighting. Value....................	300.00
#16—Gasoline Driven pressure pump installation at spring. For plant and domestic use. 800 Ft., of 2″ water line to Plant site from spring. Value....................	500.00
#17—3,000 Watt gasoline driven Hobart Generator for current in residence and shop. Used. Value....................	400.00
#18—5,000 Watt plant, same as above, for stand by and additional power. Value....................	500.00
Sub Total................	$33,000.00
#19—Tools, supplies, repair parts, spare engines, etc. Value....................	$ 2,500.00
#20—One Joy portable compressor with Jack Hammer and Hose. Value....................	4,500.00
#21—¾ Ton two wheel Trailer for miscellaneous hauling; has hydraulic brakes, new tires, etc. Value....................	200.00

Grading—Terracing—Road Work

#22—Grading and Terracing: Stock-pile Areas. Approximately ½ acre.................	300.00
Building Site area. Approximately ½ acre	400.00
Plant Site. Approximately 1½ acre......	1,200.00
Road to Spring. Approximately 800'.....	200.00
Roads to Quarry Faces. 3½ Miles. Roads average three to four yards in width. Approximate grade 15%...............	15,500.00
Parking Space. ¼ acre................	175.00
	$24,975.00
Total From Page—2.........	33,000.00
Total From Page—1.........	22,200.00
Total Valuation............................	$80,175.00

Appraisal by W. L. Perry, Realtor.

Copy

August 20, 1958.

Director
Bureau of Land Management
Los Angeles, California

Sub: M.A.L.A. 0137951
Contest 6833
M:PFM agd
Alfred Coleman

Gentlemen:

This is to inform you that I have recently made a thorough inspection of the land, quarries and property involved in the above subject. I have known Mr. Coleman for approximately ten years, during which time I have known that he has been developing the above captioned claims for a rock quarry.

He has 18 claims, all containing valuable rock for building purposes. The demand for this rock is becoming greater each year. The type of rock that is found on his quarries is much harder than the average, making it much more valuable for construction work.

He has graded roads into the quarries. I estimate that the labor in this grading would normally cost as much as $15,000.00. He has developed a spring with pipelines and pump which has considerable value. He has 3 trucks, 1 car, 2 portable power plants, 2 tractors, 1 chain saw, a buzz saw, a fire pump, a rock crusher and a rock screen located on the premises. There are at least 3 families dependent on the quarries for a living.

It is my opinion that there is an unlimited supply of rock on these claims. With the work that has been done and future development, it would be of great value to the economy of Southern California.

Very truly yours, American National Bank, J. B. Quayle, Vice President.

JBQ/le

Copy

BOARD OF BUILDING AND SAFETY COMMISSIONERS
City of Los Angeles

Renewal RR 2515

Job Address: General Approval

Petitioner:

Ornamental Rock & Material Co.,
P. O. Box 322
Big Bear City, California

Subject:

Reapproval for the use of Saragosa Quartzite quarried stone when such stone is allowed by Division 24, and as veneer, as allowed by Division 29 of the Los Angeles Building Code.

Code:

91.2401 (c) 91.2402, 91.2902

Department Recommendation:

Reapproval for a period of three years until July 1, 1961 for the use of Saragosa Quartzite quarried stone when installed by Code for stone veneer.

Findings:

Samples of this rock were tested by an approved testing agency. The average compressive strength was 36,770 psi. The water absorption was 0.15 percent.

There has been no change in the material since original approval of March 28, 1955.

Approved:

s/s Hanley A. Wayne, Chief Building Bureau

G. E. Morris, Superintendent of Building.

Recommended by:

V. Rapp, Research Engineer.

The above report and recommendation was adopted by the Board of Building and Safety Commissioners on: July 31, 1958.

Copy

DEPARTMENT OF BUILDING AND SAFETY
County of San Bernardino
San Bernardino, California

May 16, 1955

Alfred Coleman
P. O. Box 322
Big Bear City, Calif.

This Department will permit the use of your quartzite from the Baldwin Lake Quarry in any manner permitted by Chapter 24 of the Uniform Building Code.

Building and Safety Department:

s/s D. A. Densel, County Building Official.

DD/jk

DECISION MODIFIED   CASE REMANDED—June 22, 1960

Contest proceedings, No. 6833, were initiated upon the protest of the Forest Service, against the mining claims identified above, listed in mineral patent application, Sacramento 0137951. The complaint charged that (1) the lands within the claims are nonmineral in character, (2) minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery and (3) $500 has not been expended on Baldwin Lake Quarry Claims Nos. 7, 9, and 11 through 19. After a hearing the Hearing Examiner, by decision of December 18, 1958, found that the Nos. 1, 4, 5, 8 and 10 claims had been validated by discovery; he declared the remaining claims to be invalid. Mr. and Mrs. Coleman have appealed from the finding of invalidity; the Forest Service has appealed from that part of the decision which held the five claims valid.

The Forest Service asserts that a valid discovery on any of the claims was not demonstrated prior to July 23, 1955, and that all the claims are invalid. The contestees contend that each and every claim was validated by discovery. Arguments of the parties were also presented concerning the third charge, i.e., the $500 worth of labor required to be expended or improvements made upon the claims to qualify for patent (30 U.S.C. sec. 29).

The Baldwin claims were located on various dates in 1949, 1951 and 1952, for the valuable deposit of Saragossa quartzite alleged to be contained therein. They are within the San Bernardino National Forest; they cover 720 acres and are traversed by California State Highway No. 18 for approximately 11,920 feet (about 24 acres). The lands comprise approximately 1/40th of the quartzite deposits in the Baldwin Lake area (Tr. 39). In a supplement to the patent application the contestees stated "This is a rock quarry, not a gold mine. A representative of the Government will find it impossible to take two steps in any direction of the compass, on any one of the claims, without walking over quartzite, the mineral claimed in the Patent Application. There can be no difficulty in determining the existence of the mineral claimed. Please refer to Special Report No. 31, geology of Johnston grade area, California Bureau of Mines; this report included as part of patent application. The whole mountain is the point of discovery.

* * * We are dealing with placer rock claims under quarry law. There is no valuable timber on these claims. * * *" The publication referred to states the quartzite may be over 1000 feet thick.

The attorney for the contestant stated that "there are possibilities on these claims because of the scenic features for the location of a park in certain areas, and they also have in them various recreational features which would make them desirable for other purposes" (Tr. 75), but no evidence was presented as to the value of the lands in the claims for recreational, park or other purposes. The words "lands chiefly valuable" in the act of 1892 imply that the test for determining whether the lands may be entered under the placer mining laws is a comparison of their building stone values with their value for other purposes. That has been the test applied by the Department in determining whether "lands chiefly valuable for stone" could be entered under the timber and stone act of June 3, 1878 (20 Stat. 89; 43 U.S.C. 313), section 2 of which was amended by the act of 1892. See *City of Tucson* v. *Dodson,* 52 L.D. 36; *Narver* v. *Eastman,* 34 L.D. 123; *Ada B. Millican,* 43 L.D. 553. Applying the comparative value test to the lands within these claims, as no evidence has been presented that the lands have value for recreational or other non-mining purposes exceeding the values of the lands for their building stone, it must be conceded that the lands are "chiefly valuable" for their building stone. But conceding that the lands are chiefly valuable for the building stone deposits as contrasted with any other values the lands may have, does not dispense with the necessity for the defendant to establish that a discovery on each claim has been made sufficient to validate it and to that end establish that the particular deposit on each is a valuable one because of its suitability for building purposes, its accessibility and the existence of a present demand therefor and hence can be marketed profitably. See *Estate of Victor E. Hanny,* A-26280 (1952) unreported; Departmental instructions of August 29, 1896 (23 L.D. 322). We now turn to the question whether each of the claims contains a valid discovery.

The deposits of stone on the 720 acres in the claims are part of approximately 28,000 acres of similar stone (Tr. 38, 39) on ridges extending from Gold Mountain, which, according to Sanborn, a qualified mining engineer testifying for the contestant, for many years "have been used locally and to some extent somewhat distant from the area for fireplaces, rock walls, and to a very limited extent for veneer-type of construction." (Tr. 22). He said that the stone is extremely tough, does not shape with ease and when broken breaks in a way not predictable, and consequently the market for the stone is limited and no appreciable increase in sale could be expected (Tr. 39). Hence he was of the opinion that a prudent man would not be justified in spending time and money with a reasonable chance of success. But he said that an examination of sale receipts which Mr. Coleman made available to him indicated that since the claims were located in excess of $12,000.00 worth of stone was disposed of in the interim between the dates of locations and the filing of the patent application (Tr. 23). He testified further that from January, 1957, to the date of his examination of the claims, sales amount roughly to $1,025 (Tr. 23). Another witness for the contestant, Burman, Southern Division Manager of the Western State Stone Company, primarily a marketer, producer and distributor of natural stone products, testified that masons were somewhat adverse to using the stone because it dulled their tools although it is susceptible to cutting down and shaping; and that so far as he knew no stone from the claims was presently being sold (Tr. 54, 55, 56). However, he stated that the stone was adaptable to mass construction techniques, that the market for stone "goes in cycles" and that other types of stone were presently enjoying the most popularity (Tr. 58).

Each claim is abundantly endowed with rock deposits. The contestees, during the 10 year period since the location of the mining claims built a home, shop, and other facilities necessarily incident to their mining activities and have graded roads within the claims. Concerning individual claims it was shown that the home and other facilities were constructed on claim No. 1; approximately $1,500 worth of stone has been sold from that claim. Materials in the value of about $8,000 has been sold from claim No. 5; about $1,080 from claim No. 8 and about $1,500 from claim No. 10. Sales to the total amount of approximately $350 were made from claim No. 4; no sales or sales in lesser amounts were made from the remainder of the claims.

Mr. McClellan, testifying in behalf of the contestees, showed that he had entered into a lease agreement with Mr. Coleman. The lease, executed May 17, 1958, permitted operations looking to the sale and disposal of any materials on the claims, excepting building stone. Operations under the lease have been almost exclusively restricted to claim No. 10.

The Government witnesses, in view of the cost and value of the improvements, the income from sales, the demand or lack thereof in neighboring and distant localities, were of the opinion that a better market than that already portrayed by the contestees could not be developed and that a prudent man would not be justified in the further expenditure of labor and means, with a reasonable prospect of success, in developing a paying mine from any of the claims.

The opinions and contentions of the contestees concerning the value of the rock for which the claims were located are cogently presented in statements of Mr. McClellan appearing in Tr. 80 and 82. They follow:

> "But we expect, in our little operation up there, an annual sales volume of not less than $25,000 per year. At the present time it proves that there is some value to the property, because we have four families who are deriving their living and livelihood from that property, so there must be some values there.
>
> * * * *
>
> "During the months of July, August and first part of September, our sales of these products are in excess of $4,000, just in those two and a half months. We sold slightly over $2,000 worth in the month of July. We sold $1,500 in the month of August, and our sales so far this month are approximately a thousand dollars.
>
> "As I stated before, we expect our annual sales to be in the neighborhood of $25,000, and that will be a variety of products, from building stone, which we will take off in our classifying process, on down through sand and gravel."

Although the record is replete with testimony concerning the value of development work, that evidence is not deemed necessary to a decision in this case.

On the basis of the evidence presented, the Hearing Examiner held the Nos. 1, 4, 5, 8, and 10 claims had been validated by discovery in that the stone from the claim was shown to be marketable prior to the passage of the act of July 23, 1955 (30 U.S.C. sec 611 *et seq.*); he found the remaining claims null and void.

It is clear from the patent application and evidence submitted at the hearing, that the Baldwin Lake Quarry Claims were located solely for the building stone therein contained under the act of August 4, 1892 (30 U.S.C. sec. 161).

The act of August 4, 1892, provides in material part as follows:

> "Any person authorized to enter lands under the mining laws for the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer-mineral lands. * * *"

In order to establish a valid building-stone mining location, the land must be chiefly valuable for building stone and one must discover within the limits of the claim a deposit of stone which is of such quantity and quality that a man of ordinary prudence would be justified in the expenditure of his time and means in an effort to develop a paying mine. *Estate of Victor E. Hanny*, A-26280 (March 5, 1952); 63 I.D. 369 (1956); A-27362 (September 24, 1957). Of course, under the mining laws (30 U.S.C. secs. 21 and 22) only "valuable mineral deposits" may be located. These laws have been construed to mean that if a deposit in land does not render its extraction profitable and justify expenditures to that end, it is not a valuable mineral deposit. *Cameron* v. *United States,* 252 U.S. 450 (1920); *Chrisman* v. *Miller,* 197 U.S. 313 (1905). In applying this rule to materials of widespread occurrence it has been held that a valid discovery is established only if it is shown that the materials can be extracted, removed and marketed at a profit. *United States* v. *Everett Foster et al.*, 65 I.D. 1 (1958); *Everett Foster et al.* v. *Fred A. Seaton, etc.*, No. 14953 in the United States Court of Appeals, D.C. (October 22, 1959), 271 F.2d 836.

It is required under building stone location that each 10 acre subdivision of the claim be "chiefly valuable" for the stone. See *Ferrell et al.* v. *Hope,* 29 L.D. 12 (1899) and *American Smelting and Refining Company,* 39 L.D. 299 (1910).

There are three elements essential to the validity of a building stone placer. 1. The stone must be a "valuable mineral deposit," i.e., it must be of commercial quality and quantity peculiarly useful to the building trade and distinguishable from common stone not used for such purposes. 2. The lands located must be "chiefly valuable for building stone." 3. The deposit must be such that it can be mined, removed and marketed at a profit. Unless all three of these elements are established a claim located under the Building Stone Act is null and void.

Conceding that the stone on the claims is suitable for building purposes to some extent, in view of the immense quantities of similar stone over widespread areas outside of the claims, the stone on them must be held to be a "common variety" as defined in the act of July 23, 1955 (30 U.S.C. 611, *et seq.*) since the stone possesses no "property giving it distinct and special value" which would distinguish it from the stone on surrounding and nearby areas. But as these claims were located before that act they do not come under it and hence the criterion for determining whether each contains a valid discovery depends upon whether notwithstanding the immense quantities of similar stone the deposit on any particular claim is a valuable one.

Baldwin Lake is a playa lake of intermittent boundaries, about two miles from Big Bear City. The elevation of the lake floor is about 6700 feet. The westerly shore is embraced within the claims at about the 6750 feet level, and climbs very rapidly to over 7000 feet. Highway 18 is at the 6750 feet level as it traverses sec. 7. By reference to contestant's exhibit #2, a Geological Survey map of the area (survey of 1946) and a plat of the mining claims, it is evident that portions of the Nos. 1, 10 and 20 claims extend beyond the banks and onto the lake floor. The Nos. 1, 10, 5 and 8 claims are traversed and readily accessible from the state highway.

Bearing this in mind we note that the bulk of stone removed and sold is from the Nos. 1, 5, 8 and 10 claims and the stone on those claims are sufficient to satisfy the market.

The stone sold from the other claims appears to have been loaded on trucks only as an incident to road grading operations and sold from a central point on claims nos. 1 or 10. The record also indicates that prospective purchasers could not or would not travel very far off the main road to select stone from claims other than the nos. 1, 5, 8 and 10 and stone from those claims was not and is not in demand.

It appears from the evidence that probably much of the stone on Claims Nos. 4, 6, 7, 9, and 11 through 20 could be used for building purposes. But in view of the large quantities of similar stone in the area and considering the fact that little or no stone has been marketed from them during the approximately 10 years since they were located, the conclusion is warranted that the deposit on each lacks one of the elements essential to give it value, namely the existence of a demand for the stone on that claim. The evidence disclosed no demand for the type of stone on those claims in excess of the intermittent demand that has lead to the marketing of some of the stone found on claims Nos. 1, 5, 8 and 10 at irregular intervals during the 10 years. Lacking demand therefor, the deposits on the other claims are not marketable and hence are not valuable deposits which would support placer locations, as under the United States mining laws the discovery of a valuable deposit of mineral is a prerequisite to the validity of the location. Neither can any presently foreseeable future value that the deposits may acquire through the arising of a demand therefor, validate the locations, as the stone is a common variety which after the act of July 23, 1955, *supra*, could not be acquired by locations made before the act for deposits then valueless but which acquire value after the act. See *United States* v. *P. D. Proctor et al.*, A-27899 (May 4, 1959); *United States* v. *G. C. Mulkern*, A-27746 (January 19, 1959).

Since the 10 acre areas embraced within the claim No. 10 described as the SW¼SE¼NW¼ and the NW¼SW¼-NE¼ sec. 7 (both areas extend beyond the bank of the lake and on to the playa floor), have not been quarried, and stone therefrom has not been in demand, we believe that these 10 acre subdivisions were not chiefly valuable for the mineral deposits of stone alleged to be contained therein at time of location or at any time since; claim No. 10, to the extent of the two described subdivisions is, therefore, invalid.

We turn now to the remaining claims, i.e., the Nos. 1, 5, 8 and that portion of the No. 10 described as the N½SE¼NW¼ sec. 7, to determine whether those claims were validated by discovery, i.e., whether the deposits were able to be mined, removed and marketed at a profit prior to July 23, 1955, and may be profitably marketed today.

The record shows that stone has been removed and marketed from those claims ever since their location in 1949. Income from past sales has just about equalled the cost and value of improvements without allowance for any recompense to Mr. Coleman for his own labor. Be that as it may, it is good accounting procedure to amortize the cost of permanent improvements over a long period of time; current and/or future expenditures for maintenance will be far less than the initial costs. Under such circumstances, continued sales, even at the rate shown for the first ten years of operations have and will result in a livelihood to Mr. Coleman; he will realize a profit from operations over and above the value of his own labor. It matters not that the stone operations may not sustain a mammoth operation by a large company; it is sufficient that a prudent man be justified in expending labor and means with a reasonable prospect of success in developing a paying mine. Since a continuing and steady market, albeit not expanding, is shown to exist, and marketability of the product at a profit (even though not a great one) is shown, discovery within the meaning of the mining laws, all else being regular, is established. This is so even though it is necessary to disregard any considerations concerning the profit from the sand and gravel operations (initiated after the act of July 23, 1955), undertaken by Mr. McClellan in 1958.

The Hearing Examiner found that limited quantities of stone have been marketed at a profit ever since 1949 and that operations are maintained at a profit. The evidence fully supports such finding. Therefore, since the lands within the Baldwin Lake Quarry Claims Nos. 1, 5, 8 and the portion of No. 10 described as the N½SE¼NW¼ sec. 7 are also shown to contain valuable mineral deposits of building stone on lands which when located were chiefly valuable for such stone, these mining claims, to the extent indicated, have been validated by discovery. All else being regular, the patent application for these mining claims (to the extent indicated) shall be processed to patent.

The Hearing Examiner's decision is modified as above.

Mr. and Mrs. Coleman and the Forest Service are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. A $5.00 filing fee must be submitted for each separate mining claim included in the appeal. In taking an appeal there must be strict compliance with the regulations.

In the event of appeal by the contestees, the adverse party to be served is:

Office of the General Counsel
U. S. Department of Agriculture
212 Federal Office Building
San Francisco 2, California

In the event of appeal by the Forest Service, the adverse party to be served is:

Mr. Alfred Coleman
P.O. Box 322
Big Bear City, California

Earl H. Thomas, Acting Director.

Enclosure

DISTRIBUTION:

Mr. Alfred Coleman (Certified Mail)
Office of the General Counsel (Certified Mail)
Hon. Harry R. Sheppard, House of Representatives
Hearings Administrative Officer
Mr. Rawleigh L. Tremain, U.S.D.A.
Mr. John Sieker, Forest Service, U.S.D.A. (8)
Minerals Staff Officer (3)
Appeals List No. 1

BF

75105-60

NOTICE OF APPEAL

Please take notice that the United States, Contestant herein, desires to appeal to the Secretary from so much of the decision rendered herein by the Director as upholds the validity of claims Nos. 1, 5, 8, and 10 or any portion thereof.

United States of America. By Charles F. Lawrence,
Attorney for Contestant.

San Francisco, California, August 4, 1960.

To: Director, Bureau of Land Management.

Court of Appeals Office, Aug. 9, 1960.

Contest No. 6833
(Los Angeles)

REASONS FOR APPEAL AND REPLY TO CONTESTEES' BRIEF

This proceeding relates to 18 placer claims known as the Baldwin Lake Quarry Claims Nos. 1 and 4 through 20. Following the filing of a patent application the United States, through the Forest Service, initiated contest proceedings which resulted in a decision by a hearing examiner upholding the validity of claims Nos. 1, 4, 5, 8, and 10 and declaring the invalidity of the remainder. Cross appeals led to a decision by the Director, Bureau of Land Management, modifying the examiner's decision by declaring claim no. 4 and a portion of claim no. 10 to be invalid but in all other respects affirming that decision. Further cross-appeals have now brought the case before the Secretary.

The grounds on which the claims are attacked are that the lands are non-mineral, that there is no discovery thereon, and that $500 has not been expended on each claim.

This group of claims lies on a slope which rises steeply from the west bank of Baldwin Lake, an intermittent playa lake situated at an elevation of about 6,700 feet, some two miles from Big Bear City in San Bernardino County, California, in the San Bernardino National Forest. State Highway 18 traverses the shore of this lake and crosses the lower claims which bestride the highway and extend into the lake bed (Exhibits 1, 2).

The country rock in the area of these claims is what is known as Saragossa quartzite; it occurs over an area of some 28,000 acres, or about 44 square miles (Tr. 38-9), to a depth of perhaps 1000 feet (Tr. 125). On the claims it appears as massive outcroppings, mantled on the slopes with erosional materials which grade into fine fractions at the base. Within the claims are a number of talus slopes extending downward from the summit. Larger, more extensive talus slopes lie outside the claims to the north and to the west. At the base, the fine fractions comprise portions of the bed of Baldwin Lake (Tr. 11-13).

The claimants' patent application shows the mineral value attributed to the claims to be the value which the larger rocks possess as building materials. Apparently some $12,000 worth of this material comprising over 1000 tons has been sold for this purpose from the time of inception of these claims in 1949 to the time of their examination in 1957 (Patent application; Tr. 23).

More recently the claimants have commenced exploitation of the sand, gravel, and other detrital materials on the claims, particularly where they lie on the lake bed, and for this purpose have entered into a lease as of May 17, 1958 (Tr. 83) whereby the lessee, on a royalty basis, is authorized to sell any materials on the claims except "building stone" (Tr. 90-91). Under this arrangement the lessee, as of the date of the hearing herein, had made a number of sales, mostly of "lateral rock," which is rock used in leach fields for the overflow from septic tanks (Tr. 85-86).

Because of the commonplace nature of these various materials on the claims, because of their widespread occurrence as the country rock of the area, and because of the ordinary uses to which they are put, it is contestant's belief that they can not escape characterization as "common varieties" of sand, stone, and gravel, the location of which since 1955 has been forbidden by 30 U.S. Code 601, et seq. (Act of July 23, 1955). This was also the conclusion reached by the Director. This view has been questioned somewhat by the contestees, but the record contains no evidence demonstrating uncommon attributes for the rock on any of the claims, and it will therefore be assumed throughout this brief that this statute is applicable.

Because of this statute, these claims must have been valid as of 1955 or they are not valid at all because the materials which they represent have been withdrawn from the purview of the mining laws and are disposable only by governmental sale unless covered by a then-valid mining claim. This means, in effect, that the lessee's recently-initiated sales of lateral rock, sand, gravel, and other fines are not determinative of the matter for they have no bearing on the validity of the claim as of 1955. Accordingly, this brief will concern itself with the Baldwin Lake claims as they existed in 1955 and with the building rock in which the claimant then dealt.

As has been stated, these claims have been valued for the quartzitic rocks thereon which are supposed to be valuable for building purposes (See patent application).

This quartzite, in essence, is a sandstone so strongly cemented that fracturing, when it takes place, develops across the grains as easily as in the cementing materials around the grains (Tr. 21-22), with the result that it may be broken or shaped only with difficulty and in a way that is unpredictable (Tr. 36). As to its uses, the claimant Mr. Coleman testified (Tr. 72):

> From that can be built ornamental walls, a large portion of fireplaces, in fact, a whole fireplace if they are not too critical about its beauty, or like it rough, and many other things of that nature.

Because of its random fracturing, the quartzite is not susceptible of ready conversion into slabs; its production is largely a matter of picking and sorting, and the bulk of the material falls in the category of rubble (Tr. 22, 36-39). Working of the material results in large losses, and the impossibility of producing thin veneers limits its coverage to some 25 square feet per ton as contrasted with 60, 100, or even 140 square feet for other sandstones (Tr. 37).

According to the testimony of a dealer in stone products (Tr. 49-59), prospects for increasing, or even maintaining, sales of this stone are not bright as it "did not seem to enjoy much popularity in the L.A. area" (Tr. 59).

The claimant himself has recognized that the stone has not demonstrated much of a value in terms of actual sales performance and that such value as it possesses lies in its future prospects. Of this stone he testified (Tr. 73):

> There has never been too good a sale, not because the rock is not good, but simply because I haven't advertised one single word any place for years. I first wanted to get the thing open to a point where I could deliver in large quantity, and we have about reached that point now.

At the hearing in this case the government introduced the testimony of a competent mineral examiner to the effect that these claims could not be considered valid in that they lacked the attributes which would justify a prudent man in investing in them. His reasons for this conclusion included the lack of a developing market potential for the quartzite, its small sales to date, and the increasing difficulty of production as the usable pieces are sorted out (Tr. 39).

On the basis of this testimony and of the other facts mentioned above, it is evident that the burden of proving the validity of these claims passed to the contestees. (Note *Foster* v. *Seaton* 271 F2d 836.) It is the contention of the appellant that this burden was not met and that, in consequence, none of the claims should have been held valid.

The transcript of evidence plainly shows that at the hearing herein, except for some vague generalities, no evidence whatsoever was produce by contestees to show the validity of any particular claim until in response to cross-examination the following facts were adduced as to the status of each claim in respect to the improvements thereon and the sales of materials therefrom:

Claim no.	Value of improvements	Material removed, and its value		Transcript citation
1	$6500 (home)		$1,500	101–3
4	750 (road)		350	105–6
5	4000 (road, work area)	700 tons @ $12	8,400	103–4
6	150	20 tons @ $12	240	110
7	200	15 tons @ $17.50 (approx.)	250	110–13
8	1500 (road)	90 tons	1,350	106–7
9	150	(wood only)	0	109
10	1500		1,500	103
11	150		0	107–9
12	100–150	10 tons	120	113–6
13	100–150	5 tons	60	113–6
14	100–150		0	113–6
15	100–150	5–10 tons	100	113–6
16	100–150	10 tons	120	113–6
17	100–150		0	113–6
18	100–150		0	113–6
19	100–150		0	113–6
20	1500	400 yds. aggregate @ $4–5 (Approx.)	2,000	104–5
	$17,200–17,600		$15,990	

Most of this information was characterized by the claimant as being nothing but a "wild guess," but wild or not it comprises the only evidence offered on claimant's behalf as to the performance of each claim. Although the rule is that placer claims are to be judged on the basis of 10-acre units (*Ferrell* v. *Hope* 29 LD 12; Am. Smelting & Refining Co. 39 LD 299), there is nothing whatever in this evidence or in any other evidence in this case whereby any 10-acre tract in these claims can be judged.

In producing the modest returns tabulated above, it was necessary, according to Mr. Coleman (Tr. 116-8), for him to labor some 300 days a year over a period of ten years, working fifteen hours each day. The value of this labor, as stated by Mr. Coleman (Tr. 117-8), was not less than $3.50 per hour, or a total of $157,500.00. Thus, using this claimant's own figures (and they are the only ones available), operation of these claims yielded nothing but overwhelming loss. True, it was only a bookkeeping loss engendered by the downgrading of claimant's labor, but nonetheless, it was surely not the kind of yield that could be denominated a profit. Even should these figures contain a fivefold error, there would still have been a most substantial loss.

Doubtless, anyone, by sedulous effort, could remove almost any material from the public lands and sell it for money. But where, as here, the reasonable value of the labor expended greatly exceeds the price received, there is no profit in fact, for profit has not been created merely by the seller's willingness to charge little or nothing for his labor.

Wretched as has been the economic performance of these claims, it is made even more wretched by the circumstance that only about 80% of the above sales was of building rock, the other 20% being for septic tank leach lines, etc. (Tr. 127), uses which are not considered to characterize a material as a "valuable mineral" within the meaning of the mining laws. (*United States* v. *Brewer,* A-27908 (December 29, 1959); *United States* v. *Mattey,* 67 ID 63). Furthermore, according to Coleman, if some of these claims should be withheld from patent, the value of the remainder would be further depressed, because of competition and because of the narrowed choice of materials available to buyers (Tr. 130-1).

On the basis of the foregoing facts, it is appellant's contention that the contestees have wholly failed to meet the burden of proof imposed on them to show that their mining claims and each 10-acre legal subdivision therein contain a valuable mineral thereon, and further, they have even failed to show that the claims collectively contain such a mineral.

The first of these points requires little discussion. As has been well established, the test as to whether or not materials such as the quartzite at hand are "valuable" depends upon whether or not there is available a demonstrated market into which they can be sold at a profit. While the decision in *United States* v. *Foster,* 65 ID 1 (affirmed in *Foster* v. *Seaton,* 271 F2d 836) was concerned primarily with sand and gravel, nevertheless the principles of that decision and the following language therefrom (p. 5) are applicable here:

> The appellants appear to be under the impression that all that is necessary to validate sand and gravel claims is to see the sand and gravel on public domain and to file a claim thereon. Such is not the case. Before such a claim has any validity it must be shown that the sand and gravel are of a quality acceptable for the type of work being done in the market area, that the extent of the deposit is such that it would be profitable to extract it and process it if that is necessary, and that there is a present demand for the sand and gravel. The appellants having failed to make this showing, their contention that the discovery was made before October 29, 1951, must fail.

Inasmuch as it is an absolute impossibility to determine from the present record which if any 10-acre portions of the contestees' claims meet the requirements of law, it is obvious that there is a failure of proof and for this reason, if for no other, these claims should be withheld from patent. However, passing beyond this, and considering in their entirety those claims which were upheld by the Director (Nos. 1, 5, 8, and a portion of 10), it is submitted that the evidence does not show the kind of profitability which the mining laws contemplate is to be attached to "valuable" minerals.

The claims are located in a national forest, so the evidence offered in their behalf should be "clear and unequivocal". *United States* v. *Duvall,* 65 ID 458, 461. But in the present record all we find is contestees's admission that over an 8-year period the value of expenses and labor exceeded income by $140,000 or so. If evidence of this sort is "clear and unequivocal" proof of a profitable operation, it is not inappropriate to ask what kind of evidence there may be that fails to meet this test.

The question is a real one, and not mere rhetoric. If in the course of a mineral contest a claimant testifies to overwhelming loss such as this, is it not proper to assume that such loss was in fact realized without having to be apprehensive that charity and imagination will be pressed into service to supply the "clear and unequivocal" details which claimant failed to supply for himself.

It would seem that if the words "burden of proof" and "clear and unequivocal" are ever to be given any real meaning, and not just to be used as mere juridical window-dressing, now is the time to give them that meaning.

It is evident that these claims could be kept alive only because of the willingness of their claimant to live in indigence. As he puts it, he "wouldn't work that way to eat" (Tr. 120). If they were under corporate ownership, and all labor performed for them had to be paid for, the loss thereon would be tangible and disastrous. But the validity of a claim does not depend on the identity of its owner. One standard is not used to evaluate a claim held by an owner who employs his workmen and another standard for a claim held by an owner who, only by doing his own work, avoids the appearance of bankruptcy.

Through the public lands in California are residual gold fields where the remains, assaying perhaps five cents per yard, proved too depleted to sustain an earlier generation of miners. Yet even these, by diligent and extravagant effort, can be made to yield a dollar or two per day for those who would drudge in them. But none would say they comprise a going mine. Here we have the economic equivalent in quartzite, when extravagant, unrewarded effort, can be made to yield a daily dollar or two. But surely this does not betoken the presence of a "valuable" mineral within the meaning of the mining laws.

It is submitted that the evidence in this case, reasonably construed, wholly fails to prove, in "clear and unequivocal" fashion, that claimants had a valid claim in quartzite in

1955 or, for that matter, at the time of the hearing herein.

It is not inappropriate to say a word or two about the claimant. His memoranda and conduct of this case make it evident that he is a man of great sincerity who firmly believes in the merits of his claims. He has pointed out, probably quite correctly, that he has made a going enterprise of his claims, and that, as an integrated whole, the 720 acres for which he asks patent make good economic sense.

But the law is not with him, and the premises are not sound.

The law does not set up 720 acres as the unit which is to be judged. Much as the claimant might like it, Congress has not been so generous. Instead, 10 acres is the unit, and each must stand or fall by itself. The fact that claimant may desire an added 500 acres to be included in his mining enterprise, so as to lessen competition or to provide additional varieties of stone, may make economic sense from his standpoint, but it does not conform with the Congressional grant.

Likewise, the circumstance that claimant now seems to be enjoying a good business in sand, gravel, and lateral rock is not a reason for assuming his claim to be valid. It is not a difficult matter to give away public lands, and sand and gravel are no exception. For well-understood reasons, Congress withdrew in 1955 the right to obtain mining patents on the basis of these materials. So that claimant's newly-discovered affluence comes from his dealings in what has not been given him to deal in.

The claimant has declined to obtain the service of counsel. This is certainly his right and none could object if his presentation were given a consideration tinged with generosity. But this does not mean that we can find in the record evidence which simply is not there. Nor does it mean there should be one standard of proof for claimants who are represented by counsel and another, less demanding standard, for those who are not so represented.

The decision below recites that claimant "will realize a profit from operations over and above the value of his own labor," that "marketability of the product at a profit (even though not a great one) is shown," and that the "evidence fully supports such finding." Unless we accept claimant's mere ipse dixit, these findings just are not justified on the basis of anything in the record.

In *United States* v. *Foster,* 65 ID 1, the Secretary rejected a claimant's assertion as to the quantity of sand and gravel in his claims because it was unaccompanied by specific details, such as the results of test borings, etc. Why should we now accept a claimant's bland assertions as to another element of a valid discovery, namely, its profitable marketability, when not only are all details lacking but every indication is that profitability did not exist?

For the reasons herein stated, the decision of the Director should be modified insofar as it upholds claims 1, 5, 8, and 10, and each of such claims should be held to be invalid.

Respectfully submitted, Charles F. Lawrence, Attorney for appellant.

San Francisco, California, September 1, 1960.

California
Big Bear City
P.O. Box 322
Sept. 20, 1960

Supplement to Appeal to Frederick A. Seaton
Secretary of The Interior
United States Department of The Interior
Bureau of Land Management
Washington 25, D.C.

Subject: Contest Proceeding No. 6833, Mineral Patent Application Sacramento 1037951

Attention of Earl Thomas, Acting Director

APPEAL

I request that the Secretary of The Interior promptly issue an order to Jesse R. Farr at the Office of General Counsel U.S. Forest Service, San Francisco, California to *CEASE* and *DESIST* any further prosecution of Contest No. 6833, Alfred Coleman and Edna W. Coleman, Contestees vs. U.S. of America and that Jesse R. Farr completely withdraw this protest on the grounds that this *contest was instigated on unfounded and inaccurate* records and without any justification in fact.

I also request that the Secretary of The Interior promptly and at the same time that Contest No. 6833 is terminated by Official Order shall issue an order to the Manager of Los Angeles Bureau of Land Management to continue the Patent Proceedings on all of the Baldwin Lake Quarries No. 1 & 4 through 20 inclusive as original.

Rebuttal to Contestants Reasons for Appeal (received by Contestee 9/6/60)

This proceeding relates to 18 placer claims known as the Baldwin Lake Quarry Claims Nos. 1 & 4 through 20 inclusive.

1. As mentioned in the Contestants Brief, I have not conformed with the usual but not mandatory practice of hiring counsel to fight this case for several reasons:

(a) The burden of proof is heavy enough on the claimant under existing laws without added financial and time consuming travel and consultation effort, with counsel who until informed by me would know less of the case than I do.

(b) Standard of Judging is Truth, Justice and Mercy.

(c) If my procedure in defending my case is not that of a trained lawyer, I justify my procedure by the statement that the effort is calculated with as much sincerity as the best lawyers could possibly put into a defense to serve the ends of justice.

2. Contest No. 6833, was instigated by Office of General Counsel U.S. Forest Service, without just cause and without lawful authorizaton by laws of U.S. Congress since Public Law No. 167 does not apply to the claims involved in the contest.

3. The Bureau of Land Management and The U.S. Forest Service had not at the time this contest was instigated adequate, accurate records of what these claims contained, because The Bureau of Land Management records and the United States Forest Service records are not properly coordinated with County mining records at date of recording claims, or with State Division of Mine records of natural resources, therefore the departments administering the land do not know or make any examinations of the validity of any claim at the time it is placed in the public records.

4. One consequence of this lack of examination of a claim at the time it is established in the records places the burden of proof upon the claimant.

5. A second consequence of this lack of coordinated records is that the various departments having responsibility in administering the land are unable without coordinated records to properly determine whether the claims should remain in or be stricken from the public records.

6. We maintain that the department or departments administering the piece of land claimed should be informed by competent, unbiased, coordinated records and examination set up by the Secretary in various departments, promptly after the claim is recorded.

7. One consequence of no field examination of properly recorded discovery and the result of these incomplete records, is that unjust invalidation is attempted by some branch of administration years later with no proper records to base legal action upon.

8. A consequence of the complex legalities of proving

discovery and of validating a claim have so grown, and are such that practically all development of natural resource on dormant land is full of difficulties to frighten and stifle free enterprise and work undue hardship upon an Honest Claimant and the consequent cost to claimant and government.

9. This all is not in the interests of the public or of free enterprise or of the government who all depend in the last analysis for national growth and development and for all increased opportunity upon dormant national resource which must be tapped and developed as the population grows.

10. A Cardinal rule of the sea is "The safety of the vessel comes first." Mere words of a professional lawyer or a man who has only read sea stories are not enough to pass fair judgment upon the acts of a Captain or Chief Engineer in regard to their duties at sea with all of the hardships, emergencies and decisions that they must meet for their own survival. I ask any honest man, whose opinion is more to be considered in regard to questions of safety at sea, that of the Ships' Officers who have proved their knowledge by success and survival in meeting all of the real emergencies and decisions demanded by their profession, or the opinion of men who only read sea stories?

11. Which opinions are to be most regarded in Contest No. 6833 that of the people only testifying to legal technicalities perhaps steered through by some of them with the main idea in their minds being job protection and their monthly paychecks derived from the public tax funds or the honest opinions of the Contestee in Contest 6833, faced now with an unjustified attempt at expropriation after twelve years of hard labor by the careless invalidation of legitimate claims and honest equities built into claims, in development of dormant natural resource. This natural resource legitimately discovered and developed through my own will to work which not only provided my livelihood, and is providing and will provide because of my knowledge and my discovery of values, increased opportunity and income to others as well as increased tax returns to the government.

Ill considered criticism of my efforts, sabotages the best interests of the government and also sabotages the future of the families and children of the people perpetrating this injustice, as well as sabotaging the future of my enterprise.

No good has come or will come from this misguided criticism, except that my fight against it, may clear the way for better administration of the public lands in the future.

12. In reference to Mr. Lawrence's comments in regard to my unwilling testimony at the hearing of Sept. 16, 1958, I repeat my statement in previous appeal to Mr. John R. Wood. As soon as I entered the room in which that hearing was held, I saw an array of adverse and illegitimate competitors who had been brought there by some notification from the Forest Service. I walked up to the desk of Mr. John R. Wood, The Hearing Examiner and asked him if I was expected to testify as to facts in my business when I felt these illegitimate competitors would surely attempt to use anything they heard then for their benefit and my business injury? Mr. Wood said that if there were things I did not wish to place on record there, I could write him a letter after the hearing and present information in it, and he would consider it.

I, then asked Mr. John Wood also before the hearing started, to come up and look at the project before he left town, after the hearing, so that it would be clear in his mind as to what he was rendering a decision upon. He answered me, *"I will not examine the project personally, as it might influence my decision."* These were his words. A *point blank refusal* to examine material evidence readily available.

That hearing got off to a bad start and I felt myself under duress and purposely furnished very little *clear unequivocal testimony under the circumstances.*

I wrote Mr. John R. Wood a letter, after the hearing and sent him various facts, figures and data of the development of the claims which he returned to me previous to rendering his decision.

Mr. Burman, Sales Manager for Western States Stone, a legitimate competitor at the time, although testifying for the contestant, could not say very much against the project. He knew better.

The other illegitimate competitors at the hearing, said not one word throughout the hearing, but were simply all ears for their personal gain. I made sure they did not get much, and so Mr. Lawrence did not get much either from my testimony.

13. The decision on the hearing of Sept. 16, 1958, was

based on inaccurate testimony, without visual examination of the project by any one except Mr. Sanborn and myself. *My word against his,* at a time and place when I did not wish to pass on information to undeserving and illegitimate witnesses. I had discovered *much,* in the project, that Mr. Burman and others did not know.

14. Let us take Mr. Charles R. Lawrence's Reasons for Appeal Aug. 4, 1960, to the Secretary on their merits: The original grounds on which the claims were attacked, all have been disproved by ample evidence. The total expenditure was ample to comply with the law for all of the claims. Furthermore, in Mr. Earl Thomas's Modified Decision of June 22, 1960, Page 4, we quote, "Although the record is replete with testimony concerning the value of the development work, that evidence is not deemed necessary to a decision in this case." end quote. I state now that actually development work and total expenditure has never ceased at any time during this contest, and is at least three times in value now to what it was in original testimony. The expenditures as development progressed have been extended to a very considerable amount to all of the claims, not so well developed at date of earlier testimony. Repeated invitations are in evidence, in the records of this case to have the work and the land examined by the Bureau of Land Management. *This examination has never been made.* The only person, in this contest, other than myself, conversant *by visual examination* of the land and the development work is Mr. William Sanborn representing the contestant *or the adverse party.* His examination is now outdated by more years of accomplishment. In testimony at original hearing, Mr. Sanborn neglected to state this fact, that of the 28,000 acres of scattered quartzite and residue of this great upthrust, known as Saragosa Thrust, probably not over 2,000 acres *of this total* could be classed as workable permanent commercial deposit. *We claimed the most workable portions of the deposit.*

Mr. Sanborn frankly admitted to me that he had little or no experience in the ornamental rock business when he inspected the property and I placed facts before him, many of which *were entirely disregarded in his testimony.* Mr. Sanborn viewed ALL of the 28,000 acres he casually examined, as a scattering of the quartzite deposit surrounding the claims in question, with little knowledge of *which por-*

tions of the deposit would or would not make a practical commercial enterprise. Therefore, he cannot be called a competent witness for the government in this case.

Mr. Sanborn, in his report made no mention of the fact that when the smaller quartzite fractions are produced, crushed, washed and classified by screening, the purity of the quartzite deposits on the claims ends in product unmixed with any other (common stones) *which are practically non-existant upon the claims.* These quartzite factions [sic] can and do produce such items as colored driveway and landscape gravel ornamental garden materials, terrazo rock, roofing granules, planter rock, stepping stones and patio paving of a quality and appearance *so distinguishable from any common stone that this fractional material can by no stretch of imagination be classified as common stone,* and *no common stone will furnish the desired appearance or use when this crushed quartzite of the various types available on the claims is required for specific jobs.* Different appearing quartzite materials can and are being produced from different deposits and different outcroppings on different claims for different uses, such things as concrete aggregate and leach line rock are only incidental by products to our operation. The higher tonnage values are all in the ornamental uses of the quartzite. Our machinery was never set up and offers no real competition to an efficient concrete or road material plant. Such plants without the sources of unmixed quartzite we have claimed, in no way can provide the materials we can provide from the Baldwin Lake Quarries, to satisfy ornamental building rock demand at reasonable profitable prices. We recently furnished 5,800 sq. ft., 3½″ to 5″ thick, quartzite *veneer* of rose and varigated color to the Continental Service Co. for the decorative work on the new branch of Bank of America at Lake Arrowhead, San Bernardino County. This material was selected by the purchaser and mason contractors who did the job. The material was produced from Claims Nos. 17, 14, 5 and 8. The bulk from the first 2 claims. A satisfactory selection of color appearance to the architects' desire could not possibly have been produced at a profit from any one claim. Still there are vast quantities of distinctly different colors and textures on different claims to suit different architects. The stone provided for this job is not common country rock nor readily available elsewhere on all of the 28,000 acres, Mr. Sanborn casually describes in his report. This particular stone is so uncommon that it would be very hard and perhaps impossible to duplicate this material from any other source at a price within reason.

There are mixed quartzites noncommercial, and common stones on most of the 28,000 acres Mr. Sanborn describes whereas there are *unmixed various types of quartzite* within the claims of the Baldwin Lake Quarries, the heart and highest altitude of the Saragosa Thrust. These unmixed quartzites can be worked and classified as to size, color and texture or cleavage quite readily by practical methods, whereas it would be economically and mechanically impossible to duplicate these quartzite products from common stone or from the fractions of mixed common stones and quartzite that Mr. Sanborn viewed in the surrounding 28,000 acres.

15. In reference to Mr. Lawrence's statement on Page 3 of Reasons for Appeal, Aug. 4, 1960, Line No. 11, "*We have herewith and previously furnished clear and unequivocal evidence that this quartzite is uncommon stone of great strength, minimum absorption, unusual and distinct coloration, unusual textures and appearance and deposited in all* of the Baldwin Lake Quarry Claims 1 and 4 to 20, inclusive." These deposits have very satisfactory cleavage for stone masonry use, proven by past and present application to above use. It is upon various of the above described characteristics of the uncommon stone that our sales and business is based.

16. In reference to Mr. Earl Thomas' modified decision of June 22, Page 5, he conceded that these claims were not in any way effected by or forbidden by 30 U.S.C. Code 601, July 23, 1955, as they were all located prior to this act. *Thus, they are all valid* in respect to above laws. They are also all valid in respect as uncommon stone defined for this same law as distinguishable from common stone.

17. This stone is marketable at a profit within and upon each of the Baldwin Lake Quarries Nos. 1 and 4 to 20 inclusive. This group of claims comprises the heart of the Saragosa Thrust, the source of this uncommon stone, from below the bed of Baldwin Lake, very near to the peak of Gold Mountain which is the highest altitude of the Saragosa Thrust of quartzite in the San Bernardino Range.

This group of claims was established because of the visible values and quantities and diverse qualities of material readily available for production. Problems of purification or other perhaps prohibitive production costs are nonexistant such as over burden, etc. The whole group make the discovery and the enterprise. Any one claim in the group is equally valuable to the group as any other claim for the production of this uncommon stone. Any ten acre subdivision of any and all claims in the group is chiefly valuable for the stone claimed within its boundaries.

All of the stone is most certainly distinguishable from common stones such as those used generally for concrete or road ballast, etc., even though this uncommon stone can be put to such uses with good results. Furthermore, there is not another deposit of this quartzite in Southern California, adjacent to the vast metropolitan market, with as good and diverse a selection in large quantity and easy accessability. The unusual texture, cleavage, coloration, lack of absorption and certified great compressive strength for structural purposes. The stone on all of the claims fits Mr. Earl Thomas' requirements in his modified decision of June 22, for the validation of each and every ten acre subdivision of all of the Baldwin Lake Quarry Claims No. 1 and 4 through 20 inclusive. There are no good primary reasons for nine-tenth of the delays in this contest.

18. As an illustration of what goes on at present, Claims No. 14 13, 12 and 9 are in the south ½ of Section 1, Township 2 N, Range 1E, San Bernardino County. These are part of the group of claims in Contest 6833.

19. In the north ½ of Section 1, Township 2N, Range 1E, are other claims for quartzite adjacent to our claims and recorded at a later date. Promoters with an eye to making money, seeing our accomplishment on our legitimate claims, have this summer set in well over $100,000. worth of crushing equipment on these claims. It is almost a certainty the government has no proper records of this development upon the public domain.

Other people than ourselves place a market value upon this quartzite. We have the source. Others value even the spill over. It is very doubtful on the Talus slope described in transcript, if these promoters ever make any attempt to record for patent purposes anything they can escape recording or that they, the lessors or the owner, or claimant of these quartzite claims will ever place this resource upon the tax rolls. Their aim is to escape paying anything and to freeload off public domain at the expense of the government and legitimate enterprise. Furthermore, they can do so nicely under existing laws, except for other factors geologic, economic and human by which they will most probably dig the grave of their own abortive business project in due time. However, under present laws and administration thereof, if these people do not fail by their own doings, the government will be guilty by omission of instigating a case against freeloading on public domain against these people while at the same time that same government prosecutes and stifles the expansion of my legitimate enterprise on prior adjacent claims where I make every effort to clear title and do legitimate business with consequent legitimate addition to taxes and community wealth. While I obey the law and try to progress and put this enterprise on record, the tax dodger goes scot free and clouds title to public domain while freeloading *from public domain. Holding claims in perpetuity without* proper records of his doings. Meanwhile, I in the adjacent half section of land, in the same business, am heavily penalized by delays while trying to clear title to land for legitimate purpose from which taxes will be derived, and willingly paid, after title is cleared. The potential employment in my claims due to geologic factors is far greater and more, permanent than in these other claims. In both ½ sections of land, the administration never spent one cent for government use outside of Contest 6833 and cannot do anything with the land until title is cleared by just and appropriate action. This condition certainly bears looking into by The Secretary of The Interior, The Director of The Bureau of Land Management, The Congress of The United States, and We, the people.

20. Mr. Earl Thomas' modified decision of June 22, 1960, is based primarily upon the previous described inaccurate and inadequate testimony in transcript of hearing of Sept. 16, 1958, and upon Mr. John R. Woods decision of that same poor hearing.

In this answer to Mr. Lawrence's appeal to The Secretary of The Interior, I am not under the restraint and am not facing numerous uncertainties that I had to face at the hearing. Many of these uncertainties have resolved themselves in the interval since the first hearing.

21. I have stated the unusual and distinctive qualities of the stone on the group of claims, and have furnished a State Geological report on the deposit. An unbiased examination of the project will make the business values and potentials obvious to a practical quarry man. Any reasonable, honest person with the *visual evidence* before them as to uncommon quality of the stone can do little else than validate all of the claims as chiefly valuable for what is claimed on each ten acre subdivision even though I knew nothing of this ruling and U.S.C. 30, Code 601 was not in existence when I established the claims under the existing laws at the time of recording the claims.

22. In reference to Mr. Lawrence's appeal, Page 3, Lines 24 to 29 these claims *all have been valid before and since 1955* and the *materials on the claims have not been withdrawn,* nor do these materials come under the *purview of the new mining laws enacted at later dates.* The original protest from U.S. Forest Service is in no way justified.

We have no sand and gravel claims. Mr. Ed McClellan, who works with me, leases a gravel pit on patented ground on privae property *entirely outside these* claims. He produces some washed mortar sand in conjunction with ornamental rock sales. The quantity is modest but an asset to our rock business. Many of our customers procure sand elsewhere, but ornamental rock from us because of its uncommon qualities, not easily duplicated elsewhere.

23. Again, as to profitable marketability while book values and vague figures and words describing these can be twisted—real visible values of equities built and appraised by competent business men are not easily disguised upon visual, unbiased examination.

24. For almost five years now, clear title to the honest, tangible equities in the land carefully built have been withheld by government red tape, and without any field examination or competent, unbiased opinions. *Without clear title to these equities they cannot be used as collateral to get the necessary capital to expand the proven potential market.* Despite this serious and unjustifiable handicap, the business survives and is growing because of its real merits. This red tape and the omissions on the part of Congress

in properly implementing mining laws constantly fosters illegitimate competition and fraud in many mining claims and creates a mass of wasted expensive effort in administration costs and litigation while unjustily attacking and working undue hardship, and stifling the few legitimate private enterprises honestly built that put themselves on record where it would be worth while to use their claim equities as collateral for expansion. Lack of proper field examination and proper early field records puts recorded claims from date of recording in jeopardy and is a primary cause of this situation. More profits can much better be shown and more taxes paid after clearing title and further investment or sale can be safely made with sound title. Furthermore, by what right can taxes be assessed without determination of ownership or the issuance of title? If I had not applied for patent upon these claims, I could have gone on as a small, one man operation for years holding claims in perpetuity under existing laws or even expanded the operation partly at public expense, freeloading and speculating upon the public domain as thousands of others are doing without any field examination of claims. Can this be called good land management? Can freeloading or speculating promotion on public domain with little payment or no payment of taxes be called good citizenship? Should this type of mining be fostered by omissions in the land law, at the expense of honest productive claimants and the general public? Is a man not worthy of his hire, if he builds equity in an honestly developed claim rather than accepting cash from a corporation or a government pay check for some other service? Is not the honest equity built into the land and a clear recorded title a tangible profit for the labor involved over and above a livelihood produced from the natural resource? Is this profit to be denied? Is not clear title the right of a man who has complied with the law in developing a productive enterprise from unclaimed natural resource? Especially, if the man is self supporting and creates opportunity and a useful product for the use of others at reasonable prices. By what stretch of imagination can anyone justify the expropriation of 12 years of hard labor and expenditure made and the equities built therefórm on unclaimed dormant land and unclaimed natural dormant resource? *What* is the real unequivocal evidence in this case? The actual performance of labor and expenditures to build by a prudent man the discovery of dormant natural resource and equities that can be examined visually in conformity to existing laws, or a mass of wording that produces nothing by the representatives of we, the people, paid in part out of the productive labors of the prudent man being thus criticized?

25. When the first Continental Congress convened to shape our government, the only *permanent source of revenue* in sight to support that government was the natural resources in the land and the will of the peole. Without resources to draw from nothing could be produced and the will to produce meant nothing. Congress committed themselves by laws then and since to allow the people access to natural resources and freedom of action and title to that which they earned in return for the people's necessary will to produce, plus a portion of the production for taxes to support the government. It made a self sufficient government and a self sufficient people. The people and the government all live and always will live from primary production from the land. Government or people cannot survive without this primary productive effort. In the long run, the more production the more broadening of the tax base and the greater opportunity for all. The population increases.

Congress nor any branch of the administration, then, or now, are not giving the people anything. Congress is hired and paid by the people for it's services in the proper distribution and taxing, proper crediting of the people's earnings, and the people's produce. Congress is paid to meet this responsibility. The people, including myself, have right to title to that which they produce or earn under law. I claim full and clear title to the Baldwin, Lake Quarries No. 1 & 4 through 20 inclusive, because of equities earned and production carried on under existing laws. Title which is the existing profit of tangible value built into equities by my own labor and expense, is being denied me and an unjust attempt is being made to expropriate outside the law.

26. My rough comment to Mr. Lawrence's brief of Aug. 4, 1960, Page 11, is this; he confuses the issue by comparision with a sand and gravel case that does not apply. We have no *sand and gravel claim.*

We have no newly discovered affluence as he states on

Page 11, Lines 23 and 24. I have been given no "consideration tinged with generosity", his words. "Material was not given to me to deal in", Line 24 (sand and gravel). I discovered the use of and earned the right to rock deposits in question under existing laws. In fact, nothing was given to me. I was allowed and encouraged by printed publications and the committments of the Continental Congress and all existing laws at the time the claims were established, to claim a valid valuable discovery of dormant natural resource. In this case, Saragosa quartzite an uncommon and useful stone that would justify a prudent man to spend time and money upon it.

27. There is printed promise in the committments of the Congress of the United States to deed land and clear title to claimant after claim is perfected, after patent proceedings are completed and after the purchase price of the land as published by law is paid. I undertook to perform all of these tasks in regard to the development of the Baldwin Lake Quarries No. 1 & 4 through 20 inclusive. Obligations or committments on my part have already been met as far as the present land management has allowed me to progress in the effort. Any lack of completion of requirements now lies at the doors of the law makers and administrators, holding up patent proceedings. Inadequate records or no records are all the administrators have to work with. This is due to improper implementation of the laws. I have done my best to furnish the government with all applicable information. In spite of all of the expense to the public, the government has failed to compile any *accurate records* other than those which I furnish in this case.

28. This project has to be examined with an open mind for potential profits. It will then stand well on its own merits. The project has stood so well on its merits for the past twelve years that all people I now take over the project are amazed at what they see. The comment is uniformly the same, "You have something here." My major sales effort to date has been to simply show the project and the products to prospective purchasers. These sales can be greatly increased after source is firmly established *by clear title to source.* I dare not try to advertise too much or expand too fast *until the title is clear,*

and until all of the equities have an appraised value as real property on the tax rolls. As an unproven or unperfected group of mining claims, the enterprise with all built in equities is poor collateral. Therefore, my own honest effort to clear title to the land as the law provides, to improve the collateral value. A clouded title is of no value to me or to the government or anyone else.

29. The government leaves land open to clouded title by inviting or permitting the development of natural resource under present and past vague mining laws. There is no check on claims at the date of recording to choke off, at the source, illegitimate claims and consequent litigation and clouding of title to lands. It is not mandatory that a man prove, perfect and patent a claim. It is a complete case of locking the barn door after the horse is out. As soon as a claim is established on public domain the title to that land is clouded between the government and the claimant until the time the title is cleared. I suggest that my comments in previous appeal on the subject MINING LAW be studied carefully. If I now accept expropriation of labor equities honestly earned plus invalidation of title established by legitimate claim and valid discovery within the law, I then, automatically accept dictatorship and unjustified bureaucractic action. Am I expected to accept the above? If so, why?

A. The land claimed is mineral in character.
B. The land or the mineral is not withdrawn.
C. Sufficient has been expended for the benefit of each adjacent claim and the benefit of all of the claims.
D. The mineral is uncommon stone distinguishable from common stone.
E. This uncommon stone can be produced and marketed at a profit.
F. Each ten acre subdivision is chiefly valuable for the uncommon stone, quartzite, which is claimed.

30. We note that in Mr. Thomas' decision of June 22, 1960, he makes no mention of our request to validate all of the claims as per our appeal of Jan. 16, 1959. He does state, "Evidence of expenditure is not deemed necessary to a decision in this case", Page 4. Why not, on one, any, or all the claims? How could production or mining be

proved at a profit without expenditure by a prudent man with reasonable prospects of success?

We note that Mr. Thomas does say, Page 5 of his modified decision; "But as these claims were located before that act (referring to July 23, 1955 (30 U.S.C. 611, *et seq.*) *they do not come under the act* and hence the criterion for determining whether each claim contains a valid discovery depends upon whether notwithstanding the immense quantities of similar stone the deposit on any particular claim is a valuable one." end quote. In contradiction to Mr. Thomas' opinion as to the non applicability of (30 U.S.C. 611, *et seq.*) the contestant assumes throughout his brief that this statute is applicable.

The statute being non applicable to these claims Baldwin Lake Quarries No. 1 & 4 through 20 inclusive because of the clear unequivocal evidence furnished and the true facts of the case, this original protest should never have been made with all of the costs entailed if there were any true records of the claims for the contestants to check in the first place. Such records were not kept or properly checked *before* starting this illegal attempt at invalidation and expropriation of Baldwin Lake Quarries No. 1 & 4 through 20 inclusive. Contest 6833.

Very truly yours, Alfred Coleman.

REQUEST FOR REHEARING OF CONTEST No. 6833 (LOS ANGELES); MINERAL PATENT APPLICATION, LOS ANGELES

0137951

The appellant herein, Alfred Coleman, hereby requests a rehearing of the contest (No. 6833, Los Angeles) against his 18 placer mining claims known as Baldwin Lake Quarry Claims No. 1 and 4 through 20 inclusive. This request is based upon the ground that the decision designated A-28557 and issued March 27, 1962 by the United States Department of the Interior is erroneous, and upon the further ground that newly-discovered evidence which was not presented during the hearing of the contest requires the United States Department of Interior to order a new hearing.

Newly Discovered Evidence

The newly-discovered evidence which supports this request for the United States Department of Interior to order a new hearing is as follows:

1. Testimony of an expert geologist and mineralogist as follows:

> The claims cover a portion of the Saragosa quartzite formation which is approximately 1000 feet thick. The quartzite is a hard, dense rock composed of metamorphosed quartz sand grains.
>
> As the formation was subjected to mountain building stresses, it is highly fractured and faulted. The quartzite, therefor, is relatively easy to quarry and generally rock fragments have one or more flat faces.
>
> Due to iron carrying solutions from depth impregnating the area, the fractured faces are stained in varying degrees. These red, brown, yellow colors are in attractive contrast to the white fresh quartzite. To my knowledge, in southern California, there is no deposit of quartzite similar to the Saragosa, making this material unique.
>
> By being homogeneous chemically and physically, quartzite is one of the strongest and weather resistant

> of rocks. As quartzite is essentially quartz, weight is not a factor for freight or ie: roofing granule. It can be used structurally to bear great weight in contrast to sandstone and limestone. It will not crumble or powder if used for roofing granules. The difference in crushing cost compared to limestone is negligible.
>
> The quartzite is currently being used for structural, ornamental, and aggregate purposes. It has many potential uses ie: roofing granule, refractory, abrasive, inert filtration, etc.
>
> Many operational factors favor this property ie: ease of access, gravity mining, highway transportation, electric power, water, local labor, year around operation, and an expanding market.
>
> The Baldwin Lake property is ample in size to insure wide selection of rock coloration, and reserves for investment and market development. There is no important factor that would prevent this being a profitable operation with a good future.

2. Such evidence shows that all the requirements for discovery of a valuable mineral deposit, namely, Saragosa quartzite, and that the said stone may be extracted, removed and marketed at a profit.

3. Such evidence will establish that the stone, consisting of Saragosa quartzite, is not a common variety within the definition of the act of August 4, 1892 (30 U.S.C. 1958 ed, Sections 23, 35 and 161) but has distinguishing characteristics, is uncommon, and has properties of special value and use.

4. Such evidence supports a finding that the minerals claimed by Alfred Coleman are of such character that a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine.

5. Such evidence will show that by reason of accessibility, bona fides in development, proximity to market, existence or present demand and other factors, the deposit described in the proposed expert testimony has such value that it can be processed, removed, and disposed of at a profit.

Error of Law

The errors of law in the decision declaring Alfred Coleman's mining claim null and void include all the objections heretofore presented in documents filed by the appellant in proceedings in contest No. 6833, and in particular the following grounds:

1. That the protests of the United States, and the Forestry Service, were improperly upheld because they are not supported by any evidence whatever; that the statement in such protests that the lands upon which the minerals are located were withdrawn is contrary to the undisputed evidence that shows such lands have not been withdrawn; that the allegation in the protests that the lands are non-mineral in character is clearly contradicted by the uncontroverted facts that the land is entirely mineral, and 80 per cent by weight, of the minerials claimed; that the allegation of insufficent expenditures have been made on the appellant's lands is not supported by any evidence; on the contrary, the evidence shows substantial expenditures prior to the filing of appellant's application for a patent in January, 1956 for the purpose of development of minerals.

2. That the hearing examiner refused appellant's motion that he inspect the premises to assist him in validating the claims and that his decision invalidating certain of appellant's claims was based only upon testimony of witnesses for the contestant who described the results of their inspections, and that the hearing examiner's decision was biased and improperly based upon insufficient evidence.

3. That the decision is contrary to the public interest in that it contravenes the intention of Congress when it adopted the General Mining Laws of the United States which authorize mines to apply for patents to protect their valid discoveries of minerals and promote the development of minerals useful and necessary to the commercial and economic growth of the United States.

4. That the decision erroneously applies and construes the definition of "a common variety of stone" as provided in 30 U.S.C., 1958 ed, Section 611; that, even if the definition of common varieties as adopted in the decision is correct, it does not apply to any of the claims of this appellant, which are based upon discoveries, and made,

occupied, and developed prior to July 23, 1955; that the appellant's rights in said claims are protected by Public Law 167.

For the reasons stated, the appellant respectfully submits that the new evidence referred to, and the errors of law in the decision, require its reversal, and provide a sound basis for the ordering of a new hearing of the contest herein. Or complete Reversal of Decision *forthwith validating all of the Claims.*

Alfred Coleman, Appellant and Applicant.

To save useless expense to the government and to me.

To partially validate destroys the value of the enterprise by decreasing source and variety of material to where long term machinery investment would not be justified.

My appeals for complete validation are because the mineral rights and the surface rights are integral on these claims. Multiple use would create a conflict of interests.

Alfred Coleman.

A28557

OFFICE OF THE SECRETARY
UNITED STATES DEPT. OF THE INTERIOR

October 19, 1962.

STATEMENT OF FACTS

Reference is made to allegations in letter from Don R. Bauer, Forest Supervisor, August 30, 1962. Allegations based upon a decision rendered May 27, 1962, by the Department of the Interior, to whom an appeal was previously made by Mr. Coleman. The original Protest 6833, by the Office of General Counsel, U.S. Forest Service, San Francisco, attempted to apply Public Law 167, enacted July 23, 1955, to the BALDWIN LAKE QUARRY CLAIMS 1 and 4 through 20, inclusive. This law does NOT apply to claims located prior to July 23, 1955, for uncommon stone or minerals having special properties or values.

Allegation in Decision of Department of the Interior of May 27, 1962, "a common variety of stone," is an inaccurate description of the stone contained in the deposits of the BALDWIN LAKE QUARRY CLAIMS.

The word "common" is defined in dictionaries as "something which has no distinguishing characteristics." The stone in the deposits of the BALDWIN LAKE QUARRY CLAIMS HAS distinguishing characteristics, is uncommon, and has properties of special value and use.

Common varieties, as applied to minerals under Public Law 167, have been especially defined by Acting Director Earl J. Thomas, of the Bureau of Land Management. This definition was published in the CALIFORINA MINING JOURNAL April 1959 issue. Common varieties are defined in the August 1962 publication, MINERAL INFORMATION SERVICE BULLETIN, California State Division of Mines. Both definitions exclude the application of Public Law 167 from material of the BALDWIN LAKE QUARRY CLAIMS, saragosa quartzite. Also see State Geologist's Special Report No. 31, GEOLOGY OF THE JOHNSON GRADE AREA, published by the State of California, Division of Mines, in 1954.

Production and marketing at a profit of this "uncommon stone" (saragosa quartzite) was accomplished for many years prior to the enactment of Public Law 167, and has never ceased since enactment of this law through to present date.

We further wish to point out to you the following salient points:

1. There is no "occupancy trepass" involved here
2. There is no fraud
3. There is no debt incurred to the Government
4. There has been good faith on the part of the claimant, Alfred Coleman
5. All taxes are paid.

The Claims are protected as to existing rights by recorded verified statement under Public Law 167 due to Location prior to July 23, 1965. The Claims are lawfully occupied under the General Mining Laws of the United States and the Mining Laws of the State of California

(Signed) Alfred Coleman.

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